# ADMINISTRATIVE REGISTER OF KENTUCKY

**LEGISLATIVE RESEARCH COMMISSION**  
Frankfort, Kentucky  
VOLUME 32, NUMBER 4  
SATURDAY, OCTOBER 1, 2005

## ARRS - OCTOBER 2005 TENTATIVE AGENDA

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## MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet October 11, 2005 at 10:00 a.m. in Room 149 of the Capitol Annex, Frankfort, Kentucky. See tentative agenda on pages 579-581 of this Administrative Register.
The ADMINISTRATIVE REGISTER OF KENTUCKY is the monthly supplement for the 2005 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

HOW TO CITE: Cite all material in the ADMINISTRATIVE REGISTER OF KENTUCKY by Volume number and Page number. Example: Volume 32, Kentucky Register, page 318 (short form: 31 Ky.R. 318).

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

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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.

No transcript of the hearing need to be taken 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.
STATEMENT OF EMERGENCY
32 KAR 1:020E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under 121.120(1)(g) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions made to candidates, slate of candidates, and committees. An ordinary administrative regulation would not be sufficient because the current reporting forms allowing such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the Registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
JOHN ROGERS, Chairman

DEPARTMENT OF STATE
Registry of Election Finance

(Emergency Amendment)

32 KAR 1:020E. Appointment of campaign treasurer and optional request for reporting exemption.

RELATES TO: KRS 121.160(1), 121.180(1)
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)
EFFECTIVE: September 2, 2005
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121, KRS 121.120(4) requires the [Kentucky] Registry of Election Finance to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.160(1) requires candidates as part of their filing papers to designate a campaign treasurer. KRS 121.180(1) permits certain candidates to request an exemption from reporting to the Registry when they file for office. This administrative regulation establishes a single form for the appointment of a campaign treasurer and the optional request for exemption from reporting.

Section 1. Appointment of Campaign Treasurer. The "Appointment of Campaign Treasurer and Optional Reporting Exemption Form[,] 2005-Edition[,]" shall be the official form to be used by candidates seeking an exemption from election finance reporting under KRS 121.180(1)(e) and (b).

Section 2. Optional Request for Reporting Exemption. (1) The "Appointment of Campaign Treasurer and Optional Reporting Exemption Form[,] 2005-Edition[,]" shall be the official form to be used by candidates seeking a request for exemption from election finance reporting under KRS 121.180(1)(c).

(2) The "Appointment of Campaign Treasurer and Optional Reporting Exemption Form[,] 2003-Edition[,]" shall be the official form to be used by candidates seeking to rescind a request for exemption from election finance reporting under KRS 121.180(1)(c).

Section 3. Incorporation by Reference. (1) The "Appointment of Campaign Treasurer and Optional Reporting Exemption Form[,] 2003-Edition[,]" reference KREF 001, revised 05/2005(E) is incorporated by reference.

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

JOHN ROGERS, CHAIRMAN
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
CONTACT PERSON: Connie L. Vernell, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-5822.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Vernell
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates an official form for the appointment of a campaign treasurer and optional reporting exemption.
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the Registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the reporting requirements under KRS 121.160(1) and 121.180(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: This amendment updates the latest edition of the official reporting form and clarifies the contact information under the public notice section.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the form into compliance with changes in the law to further assist the effective administration of the reporting requirements under KRS 121.160(1) and 121.180(1).
(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All candidates and slates of candidates appointing campaign treasurers and requesting exemptions from reporting requirements will be affected by this administrative regulation.
(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: The candidates and slates of candidates will be furnished a revised official form to meet their reporting requirements. To the extent the public, media, and specific interest groups may depend on the Registry’s disclosure function, they will be affected by this administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.
(b) On a continuing basis: Ordinary printing costs already anticipated in budget.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry 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 amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

Prove State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

**STATEMENT OF EMERGENCY**

32 KAR 1:030E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(g) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions made to candidates, slates of candidates, and committees. An ordinary administrative regulation would not be sufficient because the current reporting forms and schedule for such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the Registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

ERDIE FLETCHER, Governor

JOHN ROGERS, Chairman

DEPARTMENT OF STATE
Registry of Election Finance
(Emergency Amendment)

32 KAR 1:030E. Election finance statement forms; campaign contributions or expenditures in excess of $3,000.

RELATES TO: KRS 121.180(1)
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4) (3)
EFFECTIVE: September 2, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(m) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) (3) requires the Registry to promulgate "[a]dopt such administrative regulations and prescribe[ ] official forms and perform such duties as are necessary to implement the provisions of KRS 121.180 and 121.120 to 121.200." The Registry shall "develop prescribed forms for the making of [the required] reports under KRS Chapter 121." KRS 121.120(5)(n).

Section 1. (1) Candidate campaign funds and [] candidate campaign committees receiving contributions or making expenditures in excess of $3,000; and
(2) All permanent committees, political issues committees, caucus campaign committees, inaugural committees, and political party executive committees regardless of the amount of contributions or expenditures shall file the reports required by KRS 121.180 on the forms provided by the Kentucky Registry of Election Finance.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Election Finance Statement", reference KREF 006, revised 05/2005;
(b) "County Executive and District Committee Election Finance Statement", reference KREF 006-E.C&D, revised 05/2005;
(c) "State Executive Committee Election Finance Statement", reference KREF 006-E.S, revised 05/2005;
(d) "Inaugural Committee Election Finance Statement", reference KREF 006-I, revised 05/2005;
(e) "Permanent Committee (PAC) Election Finance Statement", reference KREF 006-P, revised 05/2005; and
(f) "Caucus Campaign Committee Election Finance Statement", reference KREF 006-C, revised 05/2005;
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at these forms, revised June 1, 1989, are hereby incorporated by reference. They are available at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. to [and] 4:30 p.m., local time.

JOHN ROGERS, CHAIRMAN
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
CONTACT PERSON: Connie L. Ventre, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Ventre

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates official forms for the election finance statements of candidates, slates of candidates, county executive and district committees, state executive committees, permanent committees, caucus campaign committees, and inaugural committees.
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the Registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation assists the effective administration of the reporting requirements under KRS 121.180(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: This amendment updates the latest editions of the official
cial reporting forms and clarifies the contact information under the public notice section.

(c) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the forms into compliance with changes in the law to further assist the effective administration of the reporting requirements under KRS 121.180(1).

(5) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All candidates, slates of candidates, county executive and district committees, state executive committees, permanent committees, caucus campaign committees, and inaugural committees filing election finance statements will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the Registry’s disclosure function, they will be affected by this administrative regulation.

(4) Provide an assessment of how the above groups 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 above groups will be furnished revised official forms by the Registry to meet their reporting requirements.

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

(a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

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

(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

STATEMENT OF EMERGENCY
32 KAR 1:041E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under 121.120(1)(g) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety, or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions made to candidates, slates of candidates, and committees. An ordinary administrative regulation would not be sufficient, because the current reporting forms aiding such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the Registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation will not be replaced by an ordinary administrative regulation because this is a repealer regulation.

ERNIE FLETCHER, Governor
JOHN ROGERS, Chairman

DEPARTMENT OF STATE
Registry of Election Finance
(Emergency Repealer)


RELATES TO: KRS 121.180, 121A.020(5), 121A.030(5), 121A.060

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

EFFECTIVE: September 2, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. The Registry must repeal 32 KAR 1:040 in order to affect the merger of the candidate registration forms into one (1) form and thereby reduce the number of forms required for submission. The Registry must repeal 32 KAR 1:180 in response to the repealed provisions of KRS Chapter 121A under SB 112.

Section 1. The following administrative regulations are hereby repealed:

(1) 32 KAR 1:040, Candidate report of receipts and expenditures; and

(2) 32 KAR 1:180, Twenty-four (24) hour gubernatorial state reporting.

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 19, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written comments of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Verrill

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will repeal 32 KAR 1:040 and 1:180.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) and (4) require the Registry to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifi-
cally conforms to the provisions of KRS 121.120(1)(a) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation will repeal 32 KAR 1:040 and 1:180 due to the simplification of candidate registration forms and the deletion of any references to public financing under former KRS Chapter 121A which was repealed by SB 112.

(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 candidates and candidate committees will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the Registry's disclosure function, they will be affected by this administrative regulation.

(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: This administrative regulation will reduce the number of forms a candidate must file to register and the gubernatorial slaves will look to KRS Chapter 121 for guidance on reporting requirements.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(c) 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 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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

STATEMENT OF EMERGENCY 32 KAR 1:050E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(a) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety, or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions made to candidates, slates of candidates, and committees. An ordinary administrative regulation would not be sufficient, because the current reporting forms adding such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
JOHN ROGERS, Chairman

DEPARTMENT OF STATE
Registry of Election Finance
(Emergency Amendment)

32 KAR 1:050E. Political committee registration.

RELATES TO: KRS 121.015(3), 121.170
STATUTORY AUTHORITY: KRS 121.120(1)(a), (4), 121.170(1)(2)(3). (6)

EFFECTIVE: September 2, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(a) grants the registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(3)(a) requires the registry to promulgate administrative regulations and prescribe [official forms, and perform such duties as are necessary to implement the provisions of KRS 121.015 and 121.100 to 121.200]. The Registry shall [develop the official forms for the making of reports under KRS Chapter 121 [the required reports, KRS 121.120(3)(a)].

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

(a) "Political Committee Registration" form, KREF 010, revised 05/2005, shall be the official form for the registration of campaign committees, caucuses, campaign committees, political issues committees, and permanent committees, and

(b) "Inaugural Committee Registration" form, KREF 010I, revised 05/2005, shall be the official form for the registration of inaugural committees. [This form required by KRS 121.170 for the registration of political committees, "Political Committee Registration", revised July 7, 1986, is hereby incorporated by reference and shall be]

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

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
CONTACT PERSON: Connie L. Verrill, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Verrill

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates official forms for the registration of committees required under KRS 121.170.

(b) The necessity of this administrative regulation: KRS 121.120(4) requires the registry to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the registration requirements under KRS 121.170.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the latest editions of the official reporting forms, adds the caucus campaign committees created under SB 112, and clarifies the contact information under the public notice section.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the forms into compliance with changes in the law to further assist the effective administration of the registration requirements under KRS 121.170.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All campaign committees, caucus campaign committees, political issues committees, permanent committees, and inaugural committees required to register will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry disclosure function, they will be affected by this administrative regulation.

(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: The above groups will be furnished revised official forms by the registry to meet their registration requirements.

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

(a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry 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 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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

STATEMENT OF EMERGENCY 32 KAR 1:060E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(g) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety, or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions made to candidates, slates of candidates, and committees. An ordinary administrative regulation would not be sufficient, because the current reporting forms aiding such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by this registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERNEST FLETCHER, Governor

JOHN ROGERS, Chairman

DEPARTMENT OF STATE
RegISTRY OF ELECTION FINANCE
(Emergency Amendment)

32 KAR 1:060E. Report of contributions by a contributing organization.

RELATES TO: KRS 121.015(4), KRS 121.180(6)
STATUTORY AUTHORITY: KRS 121.120(1)(a), (4)(d)
EFFECTIVE: September 2, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4)(d) requires the registry to promulgate [adopt such] administrative regulations and prescribe [official forms and perform such duties as are necessary to implement the provisions of KRS 121.015 and 121.100 to 121.200]. The Registry shall "develop prescribed forms for the making of reports under KRS Chapter 121, [the required report," KRS 121.120(3)(a)]."

Section 1. The "Report of Contributions by a Contributing Organization" form, KREF 012, revised 05/2005, shall be the official form for contributing organizations to report contributions.

Section 2. This form is hereby incorporated by reference and may [may] be obtained at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m., local time. [The form is hereby incorporated by reference].

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
CONTACT PERSON: Connie L. Verrill, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2225, fax (502) 573-6522.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Connie L. Verrill

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates an official form for the reporting of contributions by a contributing organization.

(b) The necessity of this administrative regulation: KRS 121.120(4) requires the registry to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the reporting requirements under KRS 121.015(4) and 121.180(6).
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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: This amendment updates the latest edition of the official reporting form and clarifies the contact information under the public notice section.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the forms into compliance with changes in the law to further assist the effective administration of the reporting requirements under KRS 121.015(4) and 121.180(6).
(e) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All contributing organizations required to report contributions will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry’s disclosure function, they will be affected by this administrative regulation.
(f) 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 changes if it is an amendment: The above groups will be furnished a revised official form by the registry to meet their reporting requirements.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(i) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.
(ii) On a continuing basis: Ordinary printing costs already anticipated in budget.
(h) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget.
(i) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the changes if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(j) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no fees either directly or indirectly.
(k) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

STATEMENT OF EMERGENCY 32 KAR 1:070E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under 121.120(1)(g) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions, candidates, state of candidates, and committees. An ordinary administrative regulation would not be sufficient, because the current reporting forms aiding such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
JOHN ROGERS, Chairman

DEPARTMENT OF STATE
Registry of Election Finance
(Emergency Amendment)

32 KAR 1:070E. Waiver from filing candidate’s report.

RELATES TO: KRS 121.180(9)(b)(ii)
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)(3)
EFFECTIVE: September 2, 2005
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(c) grants the registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121, KRS 121.120(4)(j)(3) requires the registry to promulgate ["adopt such"] administrative regulations and prescribe [...official forms and perform such duties as are necessary to implement the provisions of KRS 121.015 and 121.100 to 121.200."] The Registry shall "[develop prescribed] forms for the making of reports under KRS Chapter 121 [the required report," KRS 121.120(5)(e)].

Section 1. The "Political Committee Registration" form, KREEF 010, revised 05/2005, shall be the official form to request a waiver from filing a report of receipts and expenditures for a candidate. ["Waiver from Filing-Report of Receipts and Expenditures for a Candidate form"]

Section 2. The form is hereby incorporated by reference and may [ean] be obtained at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m., local time. [The form is hereby incorporated by reference.]

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 4 p.m.
CONTACT PERSON: Connie L. Verrill, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5222.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Verrill
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates the official form to request a waiver from filing a report of receipts and expenditures under KRS 121.180(9).
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the waiver request under KRS 121.160(9).
(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.
regulation: This amendment merges the official forms required by a candidate to register, a committee, and a party from filing a report of receipts and expenditures under KRS 121.180(9) and clarifies the contact information under the public notice section.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the forms into compliance with changes in the law to further assist the effective administration of the reporting requirements under KRS 121.180(9) and reduce the number of forms a candidate must file to register a committee.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All candidates and committees requesting a waiver from filing a report of receipts and expenditures will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry's disclosure function, they will be affected by this administrative regulation.

(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: This administrative regulation will reduce the number of forms a candidate must file to register a committee.

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

(a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry 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 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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

STATEMENT OF EMERGENCY 32 KAR 1:080E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under 121.120(1)(g) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety, or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all contributions made to candidates, states of candidates, and committees. An ordinary administrative regulation would not be sufficient, because the current reporting forms aiding such disclosures are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
JOHN ROGERS, Chairman

DEPARTMENT OF STATE
Registry of Election Finance
(Emergency Amendment)


RELATES TO: KRS 121.150(1)
STATUTORY AUTHORITY: KRS 121.120(1)(a),(d),(g),(q)
EFFECTIVE: September 2, 2005
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(a) grants the registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4)(d) requires the registry to promulgate "[a]dopt[ed]-such administrative regulations and prescribe [...official forms and perform such duties as are necessary to implement the provisions of KRS 121.015-1 and 121.100 to 121.250. The Registry shall 'develop prescribed forms for the making of reports under KRS Chapter 121 (the required report)."

Section 1. The "Report of an Independent Expenditure" form, KREF 013, revised 05/2005, shall be the official form to report independent expenditures.

Section 2. This form is hereby incorporated by reference and may [may be obtained at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m., local time] [The form is hereby incorporated by reference].

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
CONTACT PERSON: Connie L. Verrill, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Connie L. Verrill

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates an official form for the reporting of independent expenditures.

(b) The necessity of this administrative regulation: KRS 121.120(4) requires the registry to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the reporting requirements under KRS 121.150(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: This amendment updates the latest edition of the official reporting form and clarifies the contact information under the public notice section.

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(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the form into compliance with changes in the law to further assist the effective administration of the reporting requirements under KRS 121.150(1).

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All persons making independent expenditures and required to register and report will be affected by the administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry’s disclosure function, they could be affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if any, or by the change, if it is an amendment: The above group will be furnished a revised official form by the registry to meet their reporting requirements.

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

(a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No, only the change if it is an amendment. Any 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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

**STATEMENT OF EMERGENCY**

**32 KAR 1:100E**

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapters 121 and 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety, or welfare of Kentucky. SB 112 earned an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions made to candidates, slate of candidates, and committees. An ordinary administrative regulation would not be sufficient, because the current reporting forms aiding such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
JOHN ROGERS, Chairman

**DEPARTMENT OF STATE**

**Registry of Election Finance**

**(Emergency Amendment)**

**32 KAR 1:100E.** Slate software.

**RELATES TO:** KRS 121.180

**STATUTORY AUTHORITY:** KRS 121.120(1)(g), 121.160(b)(4) and 121A.020(7)

**EFFECTIVE:** September 2, 2005

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 121.120(1)(g) grants the registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Kentucky Registry of Election Finance to promulgate administrative regulations, adopt official forms, and perform other duties necessary to implement the provisions of KRS Chapter 121. KRS 121.160(6) requires the Kentucky Registry of Election Finance to promulgate administrative regulations to provide for a nonproprietary standardized format or formats, using industry standards, for the transmission of data required under KRS Chapter 121 (section 121A), concerning campaign financing KRS 121.120(6) also requires the Kentucky Registry of Election Finance to promulgate a filer format, to provide free filer software, and to post campaign finance data for statewide candidates on the Internet within ten (10) days of filing. KRS 121.180(12)(c) specifically requires that electronic reporting be made available for all statewide candidates, including states of candidates for Governor and Lieutenant Governor. To effectuate this legislative mandate, the Kentucky Registry of Election Finance has developed a system of electronic reporting, promulgated the Electronic Reporting Data Transmission Format, and has contracted to provide free filer software to states of candidates. The Kentucky Registry of Election Finance encourages the use of the free filer-side software, which is tailored to assist states of candidates in complying with the reporting provisions. By encouraging electronic reporting for states of candidates, the Kentucky Registry of Election Finance will be better able to manage, analyze, and post electronically-massive quantities of data within the time frame required by statute. This administrative regulation establishes requirements for electronic reporting for states of candidates using the designated Electronic Reporting Data Transmission Format for gubernatorial elections.

Section 1. [(4)] All states of candidates, their treasurers, and all campaign committees for states of candidates [including those slate of candidates receiving public financing] that elect to use filer-side software to compile, store, or transmit electronically campaign finance data shall:

(1) [4][a] Use only the filer-side software for electronic reporting that has been determined to comply with the "Electronic Reporting Data Transmission Format, 2003 Edition," promulgated under 32 KAR 2:220; and

(2) [b](a) Submit an electronic version generated by the compliant filer-side software of all campaign finance reports required under KRS 121.180, 121A.020(9) and 32 KAR 1:180 by filing on diskette or via the Kentucky Registry of Election Finance's online Internet filing system, accompanied by the original paper copy.

(b) A state of candidates that elect to compile, store, and transmit campaign finance data without the assistance of filer-side software shall use the "Gubernatorial Slate Election Finance Statement, September 2002 Edition," promulgated under 32 KAR 4:090.

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

(a) The "Electronic Reporting Data Transmission Format, 2003 Edition," and

(b) The "Electronic Reporting Software Vendor List, 2002 Edition,"
(g) The "Gubernatorial Election Finance Statement, September 2003-Edson".

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

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
CONTACT PERSON: Connie L. Vernall, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-5822.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Connie L. Vernall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for electronic reporting for states of candidates using the designated Electronic Reporting Data Transmission Format for gubernatorial elections.

(b) The necessity of this administrative regulation: KRS 121.120(6) requires the registry to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports. Further, the administrative regulation is promulgated as directed by KRS 121.120(6).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation assists the effective administration of the reporting requirements under KRS 121.180.

(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 deletes any references to public financing under former KRS Chapter 121A which was repealed by SB 112.

(b) The necessity of the amendment to this administrative regulation: The registry will no longer administer provisions of KRS Chapter 121A as repealed by SB 112.

(c) How the amendment conforms to the content of the authorizing statute: This amendment specifically conforms to the provisions of KRS 121.120(6) by promulgating an administrative regulation to provide for a nonproprietary standardized format or forms, using industry standards, for the transmission of data required under KRS Chapter 121.

(d) How the amendment will assist in the effective administration of the statute: This amendment will assist the effective administration of the electronic reporting requirements under KRS 121.180, as amended by SB 112.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All gubernatorial states of candidates subject to electronic reporting will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry's disclosure function, they will be affected by this administrative regulation.

(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: The gubernatorial states will look to KRS Chapter 121 and not Chapter 121A for guidance on electronic reporting requirements as required by SB 112.

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

(a) Initially: No additional costs anticipated.

(b) On a continuing basis: No additional costs anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. N/A, see (5) above.

(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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all individuals affected.

STATEMENT OF EMERGENCY

32 KAR 1:190E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2003 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under 121.120(1)(g) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety, or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions made to candidates, states of candidates, and committees. An ordinary administrative regulation would not be sufficient, because the current reporting forms aiding such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
JOHN ROGERS, Chairman

DEPARTMENT OF STATE
Registry of Election Finance
(Emergency Amendment)

32 KAR 1:190E. Forms for gubernatorial states of candidates and related filers.

RELATES TO: KRS 121.160(1), [121.176], 121.180(3), (9), 121A.020(2), 121A.090(2), (9), 121A.070(4), 121A.090(7), 121A.080(6), 121A.090(2)

STATUTORY AUTHORITY: KRS 121.120(1)(h), (4), 121A.020(2)

EFFECTIVE: September 2, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires [and 121A.020(7) require] the Kentucky Registry of Election Finance to promulgate administrative regulations and official forms necessary to carry out the provisions of KRS Chapter 121 [and 121A], relating to the registration and reporting by states of candidates for Governor and Lieutenant Governor. This administrative regulation establishes those forms.

Section 1. Gubernatorial States of Candidates Forms. The forms incorporated by reference in Section 3(1)(a) through (c) [4(1)(a) through (g)] of this administrative regulation, shall be the
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official forms for states of candidates for Governor and Lieutenant Governor.

Section 2. [Exploratory Committees. The forms incorporated by reference in Section 4(1)(i) through (m) of this administrative regulation, shall be the official registration and reporting forms for exploratory committees.]

Section 3. [Media Reporting. "Gubernatorial Slate Media Report [...] September 2002 Edition," incorporated by reference in Section 3(1)(a) (4)(n)(o) of this administrative regulation, shall be the official reporting form for mass media organizations and other entities required to file with the Kentucky Registry under KRS 121.180(11)(a). A radio or television station or network shall not be required to file any information other than the information set forth under KRS 121.180(11)(b).]

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


(b) "Gubernatorial Slate Election Finance Statement, September 2002 Edition" form, [reference] KREF 002/G;

(c) "Gubernatorial Slate Committee Registration [...] September 2002 Edition" form, [reference] KREF 003/G;


(e) "Request for Certification of Eligibility to Receive an Election Campaign Fund Transfer, September 2002 Edition" form, [reference] KREF 005/G;


(k) "Receipt of Statement of Intent to Accept or Reject Transfer, September 2002 Edition" form, [reference] KREF 036/G;

(l) "Exploratory Committee Registration, September 2002 Edition" form, [reference] KREF 040/G;

(m) "Exploratory Committee Election Finance Statement, September 2002 Edition" form, [reference] KREF 041/G; and


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

JOHN ROGERS, Chairman

APPROVED BY AGENCY: August 30, 2005

FILED WITH LRC: September 2, 2005 at 11 a.m.

CONTACT PERSON: Connie L. Verrill, General Counsel
Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2228, fax (502) 573-5522.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Connie L. Verrill
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates revised official forms for the registration and reporting by gubernatorial states and related media fliers.

(b) The necessity of this administrative regulation: KRS 121.180(4) requires the registry to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the registration and reporting requirements under KRS 121.180(1), 121.180(3) and 121.180(9).

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the latest editions of the official forms and deletion any references to public financing under former KRS Chapter 121A which was repealed by SB 112.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, develop prescribed form for the making of reports. Further, the registry will no longer administer provisions of KRS Chapter 121A as repealed by SB 112.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the effective administration of the registration and reporting requirements under KRS 121.180(1), 121.180(3) and 121.180(9) as amended by SB 112.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All gubernatorial states of candidates and related media fliers subject to reporting will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry's disclosure function, they will be affected by this administrative regulation.

(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: The above groups will be furnished revised official forms to meet their registration and reporting requirements as required by SB 112.

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

(a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry 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 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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

STATEMENT OF EMERGENCY

32 KAR 2:070E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly
required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under 121.120(1)(c) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety, or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions made to candidates, slates of candidates, and committees. An ordinary administrative regulation would not be sufficient, because the current reporting forms aiding such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
JOHN ROGERS, Chairman

DEPARTMENT OF STATE
Regulatory of Election Finance
(Emergency Amendment)

32 KAR 2:070E. Fundraiser registration.
RELATES TO: KRS 121.170(2),(4),(12A.020(5))
STATUTORY AUTHORITY: KRS 121.120(1)(g),(4) [1A.020(7)]
EFFECTIVE: September 2, 2005
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(a) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.170(2) and 12A.020(5) require persons who directly solicit and secure contributions for a candidate or slate of candidates in excess of $3,000 in an election to register as a fundraiser with the Registry of Election Finance. The purpose of this administrative regulation is to establish the procedure through which persons qualifying as fundraisers shall register with and report to the Registry of Election Finance.

Section 1. Definitions. "Fundraiser" shall have the meaning prescribed in KRS 121.015(11).
Section 2. Fundraiser Registration Procedure; Exemptions. (1) Any person who qualifies as a fundraiser as defined in KRS 121.015(11) and KRS 12A.020(5) shall register with the Registry immediately upon securing contributions for a candidate or slate of candidates in excess of $3,000 in an election. A fundraiser shall register by filing the "Fundraiser Registration" form (KFRF-02-019 (Fundraiser Registration)) with the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. A registered fundraiser shall comply with applicable reporting requirements as provided in KRS 121.170(2), by filing the "Registered Fundraiser Statement" with the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.
(2) As part of the packet of forms and instructions regularly provided to candidates by the registry, each candidate or slate of candidates shall receive all necessary forms and instructions for complying with applicable reporting requirements. It shall be the duty of the candidates, slate of candidates, or the appropriate campaign treasurer to provide the forms and reporting instructions to each person who qualifies as a fundraiser for the candidate or slate of candidates.
(3) For purposes of this administrative regulation, the following activities shall not qualify a person as a fundraiser:
(a) Serving as treasurer of a campaign committee;
(b) Performing clerical duties such as receiving contributions or preparing and filing campaign finance reports;
(c) Communicating an endorsement of a candidate or slate of candidates which indirectly results in the receipt of contributions, provided that the communication is not followed by one-on-one direct oral or written solicitation of contributions by the person making the endorsement; or
(d) Acting as host of a social event at one's residence or place of business, provided that the host does not directly solicit and secure contributions in excess of $3,000.

Section 3. Material Incorporated by Reference. (1) The following material is incorporated by reference:
(a) "Fundraiser Registration" form, KREF 019, revised 05/2005 and
(b) "Registered Fundraiser Statement", KREF 006/F, revised 05/2005 (Forms KREF 82-019 (Fundraiser Registration), effective 08/2002 and KREF 02-019 (Fundraiser Registration), effective 04/2002)
(2) These forms may be inspected, copied, or obtained, subject to applicable copyright law, from the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. local time, and are on file with the Regulations Compiler, Legislative Research Commission, Room 029, State Capitol Annex, Frankfort, Kentucky 40601.

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
CONTACT PERSON: Connie L. Vernill, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Connie L. Vernill
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates official forms for the registration and reporting of persons qualified as fundraisers.
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the registration and reporting requirements under KRS 121.170(2).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the latest editions of the official forms and deletes any references to former KRS Chapter 121A as repealed by SB 112.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the forms into compliance with changes in the law to further assist the effective administration of the registration and reporting requirements under KRS 121.170(2).
(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All persons qualified as fundraisers required to
register and report will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry's disclosure function, they will be affected by this administrative regulation.

(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: The above group will be furnished revised official forms by the registry to meet their registration and reporting requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.
   (b) On a continuing basis: Ordinary printing costs already anticipated in budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry 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 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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all individuals affected.

STATEMENT OF EMERGENCY
32 KAR 2:091E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(g) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety, or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions made to candidates, slates of candidates, and committees. An ordinary administrative regulation would not be sufficient, because the current reporting forms aiding such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation will not be replaced by an ordinary administrative regulation because this is a repealer administrative regulation.

ERNIE FLETCHER, Governor
JOHN ROGERS, Chairman

DEPARTMENT OF STATE
Registry of Election Finance
(Emergency Repealer)

32 KAR 2:091E. Repeal of 32 KAR 2:090 and 2:140.

RELATES TO: KRS 121.170(5), 121.180(1)
STATUTORY AUTHORITY: KRS 121.120(1)(g)
EFFECTIVE: September 2, 2005
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. The Registry must repeal 32 KAR 2:090, because the Political Committee Registration form and fee referenced in the administrative regulation is no longer required by the registry and may cause confusion concerning the registration requirements. The Registry must repeal 32 KAR 2:140 in order to effect the merger of the candidate registration forms into one (1) form and thereby reduce the number of forms required for submission.

Section 1. The following administrative regulations are hereby repealed:
   (1) 32 KAR 2:090, Permanent committees, registration and fees; and
   (2) 32 KAR 2:140, Revocation of exemption forms, reversion rights; August filers.

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 19, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
   CONTACT PERSON: Connie L. Verrill, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Verrill
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation will repeal 32 KAR 2:090 and 2:140.
   (b) The necessity of this administrative regulation: KRS 121.120(1)(g) and (4) require the registry to promulgate this administrative regulation.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescriptive forms for the making of reports.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation will repeal 32 KAR 2:090 and 2:140 due to the simplification of candidate registration forms.
   (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
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(3) Limit the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All candidates, candidate committees, and permanent committees will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry’s disclosure function, they will be affected by this administrative regulation.

(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: This administrative regulation will reduce the number of forms the above groups must file to register.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: No anticipated costs.
   (b) On a continuing basis: No anticipated costs.
   (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(6) 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.

(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all individuals affected.

STATEMENT OF EMERGENCY
32 KAR 2:170E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 15, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under 121.120(1)(j) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would cause imminent threat to the public health, safety, or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions made to candidates, state of candidates, and committees. An ordinary administrative regulation would not be sufficient, because the current reporting forms aiding such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
JOHN ROGERS, Chairman

DEPARTMENT OF STATE
Registry of Election Finance
(Emergency Amendment)

32 KAR 2:170E. In-kind contributions.

RELATES TO: KRS 121.015(6), 121A.010(4)
STATUTORY AUTHORITY: KRS 121.120(1)(g), 121A.010(4)
EFFECTIVE: September 2, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(a) grants the Registry the power to promulgate admin-

itrative regulations necessary to carry out the provisions of KRS Chapter 121, KRS 121.015(6)(b), (c), and (d) and 121A.010(4)(a), (b), (c), and (d) include the payment for or provision of certain goods and services to a candidate, slate of candidates, committee, or contributing organization within the definition of "contribution". Such payments are known as "in-kind" contributions. It is necessary to promulgate this administrative regulation to clearly identify the circumstances under which a contribution falls within the in-kind category.

Section 1. (1) As used in this administrative regulation, "in-kind contribution" has the meaning provided in KRS 121.015(6)(b) and (c) and 121A.010(4)(a), (b), (c), and (d).

(2) A candidate, slate of candidates, committee, or contributing organization shall not conspire with an individual or other entity to disguise an illegal contribution as an in-kind contribution.

(3) A business enterprise may make an in-kind contribution to a candidate, slate of candidates, committee, or contributing organization provided, however, that the business enterprise is not incorporated. The owner of a corporation may make personal in-kind contributions provided that no corporate funds or assets are involved, or, if corporate property such as copyers, telephones, or other office equipment is utilized, the actual costs are billed to the owner and reimbursed with personal funds, and the cost does not exceed the applicable individual contribution limit contained in KRS 121.150. A candidate shall not accept the use of the assets of any corporation unless the fair market value is billed to the campaign and paid for with campaign funds.

(4) If goods or services are provided at less than the rate normally charged, the amount of the in-kind contribution shall be the difference between the usual and normal charge for the goods and services at the time of the contribution and the amount actually charged.

(5) No compensation shall be considered paid to any employee under the following conditions:
(a) If an employee is paid on an hourly or salaried basis and is expected to work a particular number of hours per period, no contribution results if the employee engages in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization during what would otherwise be a regular work period, provided that the taken or released time is made up or completed by the employee within a reasonable time;
(b) No contribution results where an employee engages in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee’s time is considered his own to use as he sees fit; or
(c) No contribution results where the time used by the employee to engage in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization is bona fide, although compensable, vacation or other earned leave time.

Section 2. A contribution made under the following circumstances shall not be considered an in-kind contribution:
(1) Payment for goods and services previously or simultaneously acquired by a candidate, slate of candidates, committee, or contributing organization;
(2) Payment of a debt with cash received by a candidate, slate of candidates, committee, or contributing organization without depositing the funds into the campaign account and complying with all applicable reporting requirements.

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
CONTACT PERSON: Connie L. Verrill, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-6522.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Connie L. Verrill
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation was promulgated to clearly identify the circumstances under which a contribution falls within the in-kind category.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) requires the registry to promulgate this administrative regulation to carry out the provisions of KRS Chapter 121.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of in-kind contributions.

(e) 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 deletes any references to public financing under former KRS Chapter 121A which was repealed by SB 112.

(b) The necessity of the amendment to this administrative regulation: The registry will no longer administer the provisions of KRS Chapter 121A as repealed by SB 112.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the effective administration of in-kind contributions by deleting references to former Chapter 121A repealed by SB 112.

(3) List the type and number of individual's, businesses, organizations or state and local governments affected by this administrative regulation: All gubernatorial slates of candidates will be affected by this administrative regulation. To the extent the public media, and specific interest groups may depend on the registry's disclosure information, they will be affected by this administrative regulation.

(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: The gubernatorial slates will look to KRS Chapter 121 and not Chapter 121A for guidance on in-kind contributions as required by SB 112.

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

(a) Initially: No additional costs anticipated.

(b) On a continuing basis: No additional costs anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A, see (5) above.

(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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all individuals affected.

STATEMENT OF EMERGENCY
32 KAR 2:220E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 and repeal of KRS Chapter 121A under SB 112 that was passed by the 2005 legislature during regular session and signed by the Governor on March 16, 2005. The Kentucky Registry of Election Finance is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under 121.120(1)(g) and prescribe official forms for the making of reports under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety, or welfare of Kentucky. SB 112 carried an emergency clause stating that it was imperative for the continuance of a fair and open election process that there be full disclosure regarding all campaign contributions made to candidates, slates of candidates, and committees. An ordinary administrative regulation would not be sufficient, because the current reporting forms allowing such disclosure are not consistent with the changes under SB 112 and existing law. The revised forms for use by those regulated by the registry must be made available by November 9, 2005, the first day to file nomination papers for candidates, and an ordinary administrative regulation would not be effective by such date. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERINIE FLETCHER, Governor
JOHN ROGERS, Chairman

DEPARTMENT OF STATE
Registry of Election Finance
(Emergency Amendment)

32 KAR 2:220E. Electronic reporting file format and test file compliance procedure.

RELATES TO: KRS 121.015(13), 121.120(5), 121.180(6), 421A.020(6)

STATUTORY AUTHORITY: KRS 121.120(1)(g), 121.120(6)

EFFECTIVE: September 2, 2005

NECESSITY, FUNCTION AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(6)(a) requires the Kentucky Registry of Election Finance to promulgate administrative regulations providing "a nonproprietary standardized format or formats, using industry standards, for the transmission of data required under this chapter [KRS Chapters 421A]." Further, KRS 121.120(6)(b) requires the registry to "accept test files from software vendors and persons which it determines are electronically" to determine whether the software and data format submitted complies with the registry's file format. This administrative regulation establishes a data file format for electronic reporting, as defined by KRS 121.015(13), and a procedure for the submission of test files.


Section 2. Submission of Test Files for Compliance. (1) A vendor of file-side software or a person wishing to use vendor file-side software for the purpose of electronic reporting shall submit test files for a compliance determination by the registry in the manner described by this section. The requesting vendor or person shall complete all of the following:

(a) Address the request for a compliance determination in writing to the Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(b) Submit a cover letter addressed to the executive director, which includes the following information:

1. A brief description of the software, including the file types for whom the software is designed;

2. A description of the support offered to filers by the manufacturer or vendor of the software;

3. A statement describing whether the software is capable of executing in a client server environment;

4. The cost of the software, including the cost of any technical support offered by the manufacturer or vendor of the software; and

5. The name, address, and telephone number for a contact.
person who can provide any additional technical information on behalf of the vendor or person.

(3) There shall be made available an Electronic Reporting Software Vendor List, Edition 2003, which shall list vendor file-side software products that have been determined by the registry to comply with the format for electronic reporting specified in Section 1 of this administrative regulation.

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

(a) "The Electronic Reporting Data Transmission Format, 2003 Edition"; and

(b) "The Electronic Reporting Software Vendor List, 2003 Edition".

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

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
CONTACT PERSON: Connie L. Vennill, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Vennill

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a data file format for electronic reporting and a procedure for the submission of test files.

(b) The necessity of this administrative regulation: KRS 121.120(6) requires the registry to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(6) which provides for a nonproprietary standardized format or formats, using industry standards, for the transmission of data.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of electronic reporting under KRS 121.120(6).

(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 deletes any references to public financing under former KRS Chapter 121A which was repealed by SB 112.

(b) The necessity of the amendment to this administrative regulation: The registry will no longer administer the provisions of KRS Chapter 121A as repealed by SB 112.

(3) Submit an analysis of:

(a) The amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(6) by promulgating an administrative regulation to provide for a nonproprietary standardized format or formats, using industry standards, for the transmission of data required under KRS Chapter 121.

(b) How the amendment will assist in the effective administration of the statutes: This amendment will assist the effective administration of the electronic reporting requirements under KRS 121.120(6) as amended by SB 112.

(c) List the types and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All gubernatorial states of candidates subject to electronic reporting will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry’s disclosure function, they will be affected by this administrative regulation.

(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: The gubernatorial states will look to KRS Chapter 121 and not Chapter 121A for guidance on electronic reporting as required by SB 112.

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

(a) Initially: No additional costs anticipated.

(b) On a continuing basis: No additional costs anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A, see (5) above.

(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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

STATEMENT OF EMERGENCY

200 KAR 2:006E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to reasonably compensate employees for gasoline expenses incurred while traveling on official state business. It is necessary to promulgate this administrative regulation on an emergency basis, because the normal process will take several months, which will negatively impact the financial wellbeing of employees and other individuals traveling as part of their duties for the commonwealth.

The retail price of gasoline has risen over fifty (50) cents per gallon since the mileage reimbursement rate was calculated last quarter. This emergency administrative regulation will raise the reimbursement rate for mileage to thirty-eight (38) cents per mile until the new rate is calculated and goes into effect on October 1, 2005. This emergency administrative regulation will be replaced by an ordinary administrative regulation which will be filed along with this emergency administrative regulation.

ERNIE FLETCHER, Governor
JOHN FARRIS, Deputy Secretary
For ROBERT B. RUDDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller
(Emergency Amendment)

200 KAR 2:006E. Employees’ reimbursement for travel.

RELATES TO: KRS 44.060, 45.101
STATUTORY AUTHORITY: KRS 44.060, 45.101
EFFECTIVE: August 19, 2005
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.
Section 3 Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the commonwealth.

(3) If an employee is permanently reassigned or is stationed at a new location two (2) months, the new location shall become that employee's official work station.

Section 4. Authorizations. (1) For travel in Kentucky, or outside Kentucky, but within the United States or its possessions, or Canada, the person requesting reimbursement shall obtain authorization from the agency head or a designated representative as authorized by Secretary's Order 597-451.

(2) Travel to a bording state that does not require airline or an overnight stay shall be authorized in the same manner as travel in Kentucky.

(3) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (4), (5), and (6) of this section.

(4) If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE) or (TET) document.

(5) For travel outside of Kentucky, authorization shall be requested on Travel Authorization (TEO) document.

(6) For travel outside the United States, its possessions or Canada the person requesting reimbursement shall have obtained authorization from:

(a) The agency head or a designated representative;
(b) The secretary or a designated representative; and
(c) The governor or a designated representative.

(7) A travel request for travel specified in subsections (4) and (5) of this section shall be received by the agency or cabinet at least five (5) working days before the start of travel.

Section 5. Transportation. (1) Economy shall be required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

(2) a. Tickets propied by the commonwealth shall be purchased through agency business travel accounts provided by a major charge card company or commercial travel agencies.

b. Tickets purchased through the Internet shall be paid by the
traveler and reimbursed on a Travel Payment Voucher (TP or TPI).
3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.
4. Agencies shall be billed monthly by the charge card company.
5. Related payments shall be processed on Vendor Payment Voucher (P1) document.
(2) State vehicles. State-owned vehicles with their credit cards shall be used for state business travel if [ ] available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.
(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.
(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed if more economical transportation is not feasible.
(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Payment shall be made in accordance with subsection (1)(b) of this section.
(a) Special transportation.
(b) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.
(c) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.
(d) An employee may submit a written request for approval from the State Controller for an increased reimbursement rate greater than that calculated in Section 7, if the employee drives a personal vehicle modified to:
   1. Facilitate operation by altering controls for the brakes, accelerator, or steering wheel, or
   2. Allow an elderly driver to enter the vehicle by installing a wheelchair lift, hoist, or ramp.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.
(2) Facilities providing special government rates or commercial rates shall be used if feasible.
(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.
(4) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home shall be reimbursed if:
   (a) In attendance at a conference; and
   (b) The lodging is a necessary expense of official travel. In accordance with Section 24 of this administrative regulation [approved in advance by the agency head, or a designated representative].
(5) Group lodging, by contract.
(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.
(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.
(c) The traveler shall not claim reimbursement or subsistence for room and meals paid direct to an establishment providing these services.
(d) Payment shall be made on a Vendor Payment Voucher (P1) document and shall not include personal charges of employees or others in the official service of the commonwealth.
(e) Payment shall be made to the hotel, motel, or other establishment.
(f) Contracted group meeting rooms and lodging and meal charges shall be exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Department of Revenue shall be specified on the payment document.
(g) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on Travel Payment Voucher (TP or TPI) document.
(6) State parks. A state agency or institution using state park facilities may pay for rooms and meals by an Internal Travel Voucher (ITV) document to transfer funds, within the limits of this administrative regulation.

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:
(a) Governor;
(b) Governor's staff;
(c) Lieutenant governor;
(d) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;
(e) Electors constitutional officers;
(f) Cabinet secretaries;
(g) State officers and employees authorized to travel outside the United States;
(h) Members of statutory boards and commissions; and
(i) Others in the official service of the commonwealth.
(2) Lodging
(a) Except as provided in paragraph (b) of this subsection, a state officer or employee shall be reimbursed for the actual cost of lodging if the:
   1. Lodging is determined to be the most economical; and
   2. State officer or employee has provided the hotel, motel, or other establishment's receipt to be reimbursed for the travel expenses.
(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half (1/2) the double rate.
3. Subsistence and incidentals.
(a) Breakfast and lunch. A state officer or employee shall be eligible for reimbursement for subsistence for breakfast and lunch expenses while traveling in Kentucky. If authorized work requires an overnight stay and absence during the mealtime hours established by paragraph (d) or (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.
(b) Dinner expenses. A state officer, or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if authorized work requires an expense:
   1. At a destination more than forty (40) miles from the individual's work station and home; and
   2. During the mealtime hours established by paragraph (d) or (e) of this subsection.
(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraphs (d) and (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.
(d) Reimbursement for non-high rate areas,[5] 1. Breakfast. authorized travel 6:30 a.m. through 9 a.m. - seven (7) dollars.
   2. Lunch: authorized travel 11 a.m. through 2 p.m. - eight (8) dollars.
   3. Dinner: authorized travel 5 p.m. through 9 p.m. - fifteen (15) dollars.
(e) Reimbursement for high rate areas.
   1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - eight (8) dollars.
   2. Lunch: authorized travel 11 a.m. through 2 p.m. - nine (9) dollars.
   3. Dinner: authorized travel 5 p.m. through 9 p.m. - nineteen (19) dollars.
(f) A state officer or employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for
their actual and necessary expenses for subsistence.

(g) A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if the individual is assigned to attend meetings and training sessions.

(h) Gratuities may be reimbursed if:
1. The total payment for the meal and gratuity do not exceed the limits established in paragraphs (d) or (e) of this subsection, and
2. The gratuity does not exceed twenty (20) percent of the cost of the meal.

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).

(4) Transportation expenses.

(a) Reimbursement for authorized use of a privately-owned vehicle shall be:
1. At the rate of thirty-eight (38) cents per mile until October 1, 2005; and
2. Adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted [as last reported on June 1, 2004 and adjusted thereafter] on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:
   a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents ($1.499), the employee shall be reimbursed thirty-two (32) cents per mile.
   b. If the fuel cost is between one dollar fifty cents ($1.50) and one dollar sixty-nine and nine-tenths cents ($1.699), the employee shall be reimbursed thirty-three (33) cents per mile.
   c. If the fuel cost is between one dollar seventy cents ($1.70) and one dollar eighty-nine and nine-tenths cents ($1.899), the employee shall be reimbursed thirty-four (34) cents per mile.
   d. If the fuel cost is between one dollar ninety-one cents ($1.91) and two dollars nine and nine-tenths cents ($2.099), the employee shall be reimbursed thirty-five (35) cents per mile.
   e. If the fuel cost is between two dollars ten cents ($2.10) and two dollars twenty-nine and nine-tenths cents ($2.299), the employee shall be reimbursed thirty-six (36) cents per mile.
   f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents ($2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate.

2. Not exceed the cost of commercial coach round-trip airfare.

(b) Mileage for in-state travel shall be based on the "Kentucky Official Highway Map", mileage software or MapQuest website. Out-of-state mileage shall be based on the most recent edition of the "Rand McNally Road Atlas", mileage software or MapQuest website.

(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel Payment Voucher (TP or TPI).

(d) Reimbursement for use of privately-owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head, or a designated representative.

(e) A maximum of twenty (20) dollars per night for parking or camping charges for camping vehicles shall be reimbursed.

(f) 1. Actual parking, bridge and highway toll charges shall be reimbursed.
2. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(g) Reimbursement shall be made for reasonable incidental expenses for:
1. Baggage handling;
2. Delivery of baggage to or from a common carrier, lodging or storage; and
3. Overnight baggage charges, if the charges relate to official business.

(5)(a) Registration fees required for admittance to meetings shall be reimbursed.

(b) If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.

(c) Telephone and telegraph costs for necessary official business shall be reimbursed.

(b) Telephone calls to agency central offices shall be made through:
1. Agency 800 and 888 numbers, if available;
2. A state government telephone credit card; or
3. Lowest available service.

(7) Other incidental expenses may be allowed by the agency head or designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses

(1) The following persons shall be eligible for actual and necessary expenses:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) Elected constitutional officers;

(e) Cabinet secretaries;

(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the commonwealth.

(2)(a) Actual and necessary expenses of official business travel shall be reimbursed upon submission of receipts for items over ten (10) dollars. The secretary may reduce the amount of any actual expense to be reimbursed if the secretary determines that the expense is unreasonable.

(b) Actual and necessary expenses for official business travel shall include:
1. Lodging;
2. Meals;
3. Commercial transportation;
4. Taxes related to actual and necessary expenses; and
5. Reasonable gratuities.

(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.

(d) Reimbursement for official use of a privately-owned vehicle shall be:
1. At the rate of thirty-eight (38) cents per mile until October 1, 2005; and
2. Adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted [as last reported on June 1, 2004 and adjusted thereafter] on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:
   a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents ($1.499), the employee shall be reimbursed thirty-two (32) cents per mile.
   b. If the fuel cost is between one dollar fifty cents ($1.50) and one dollar sixty-nine and nine-tenths cents ($1.699), the employee shall be reimbursed thirty-three (33) cents per mile.
   c. If the fuel cost is between one dollar seventy cents ($1.70) and one dollar eighty-nine and nine-tenths cents ($1.899), the employee shall be reimbursed thirty-four (34) cents per mile.
   d. If the fuel cost is between one dollar ninety-one cents ($1.91) and two dollars nine and nine-tenths cents ($2.099), the employee shall be reimbursed thirty-five (35) cents per mile.
   e. If the fuel cost is between two dollars ten cents ($2.10) and two dollars twenty-nine and nine-tenths cents ($2.299), the employee shall be reimbursed thirty-six (36) cents per mile.
   f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents ($2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate.

2. Not exceed the cost of commercial coach round-trip airfare.

(e) 1. The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or designee.
2. The secretary or the secretary's designee may:
   a. Question or deny a claim for reimbursement; and
   b. Reduce the amount to be reimbursed, if the secretary determines that it is unreasonably excessive.
   (f) An employee of the Economic Development Cabinet or the Commerce Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the commonwealth if the costs were:
      1. Related to the promotion of industry, travel, or economic development;
      2. Substantiated by receipts; and
      3. Certified by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between home and work station shall not be paid
   (2)(a) If an employee's point of origin for travel is the employee's residence, mileage shall be paid for the shorter of mileage between:
      1. Residence and travel destination; or
      2. Work station and travel destination.
   (b) If an employee's point of origin for travel is the employee's workstation, and after proceeding to a travel destination, the employee's final destination is the employee's residence, mileage shall be paid for the shorter of mileage between:
      1. Residence and travel destination; or
      2. Workstation and travel destination.
   (3) Vicinity travel, and authorized travel within a claimant's work station shall be listed on separate lines on the Travel Payment Voucher (TP or TPI) document.

Section 10. Travel Documents. (1) Travel software shall have three (3) types of authorizations.
   (a) TE or TEI for in-state travel,
   (b) TEO for out-of-state travel; and
   (c) TEC for out-of-country foreign travel.
   (2) A traveler shall create:
      (a) Travel authorization (TE or TEI) document if a state park facility or a motor pool vehicle will be used or if a registration fee is to be paid in advance.
      (b) Travel authorization (TEO) document for an out-of-state trip.
      (c) Travel authorization (TEC) document for an out-of-country trip.
   (3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services.
   (4) Authorization for reimbursement of others in the official service of the commonwealth shall be requested on:
      (a) A Vendor Payment Voucher (P1) document; or
      (b) A Travel Payment Voucher (TP or TPI) document.
   (5) A Travel Payment Voucher (TP or TPI) document shall be used to claim reimbursement for travel expenses.
   (6) The Travel Payment Voucher (TP or TPI) document shall be limited to the expenses made by one (1) person for the:
      (a) Traveler; and
      (b) If applicable, another person:
         1. Who is a ward of the commonwealth, or
         2. For whom the traveler is officially responsible.
   (7) A Travel Payment Voucher (TP or TPI) document for expenses made for a person specified in subsection (6)(b) of this section shall include the person's:
      (a) Name; and
      (b) Status or official relationship to the claimant's agency.
   (8)(e) A Travel Payment Voucher (TP or TPI) document shall be submitted:
      1. For one (1) major trip; or
      2. Every two (2) weeks for employees that are in travel status for an extended period.
   (b) A Travel Payment Voucher (TP or TPI) document shall include:
      1. Social Security number of the claimant; and
      2. Purpose of each trip.
   (c) A Travel Payment Voucher (TP or TPI) document shall be signed and dated, or entered electronically and approved by the:
      1. Claimant; and
      2. Agency head or authorized representative.
   (d) If monthly expenses total less than ten (10) dollars, a Travel Payment Voucher (TP or TPI) may include expenses for six (6) months of a fiscal year.
   (e) A Travel Payment Voucher (TP or TPI) document shall be:
      1. Legibly printed in ink or typed; or
      2. Processed electronically through travel software.
   (f) A receipt shall provide the following information for each expense:
      1. Amount,
      2. Date;
      3. Location; and
      4. Type.
   (g) Receipts shall be maintained at the agency if documents are processed electronically.
   (h) If leave interrupts official travel, the dates of leave shall be stated on the Travel Payment Voucher (TP or TPI).
   (i) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Travel Payment Voucher (TP or TPI) document (1999)";
   (b) "Travel Authorization (TE or TEI) document for in-state travel (1999)";
   (c) "Travel Authorization (TEO) for out-of-state travel (1999)";
   (d) "Travel Authorization (TEC) document for out-of-country travel (1999)";
   (e) "Vendor Payment Voucher (P1) (1999)";
   (f) "Internal Travel Voucher (ITV) document (1999)";
   (g) "Kentucky Official Highway Map (2004)";
   (h) "Rand McNally Road Atlas (2001)"; and
   (i) "Secretary's Order S97-451, November 1, 1996".
   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet, Capitol Annex Building, Room 284 [284], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN R FARRIS, Deputy Secretary
For R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: August 18, 2005
FILED WITH LRC: August 19, 2005 at 4 p.m.
CONTACT PERSON: Angela C. Robinson, Staff Assistant, Finance and Administration Cabinet, Room 188 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9975.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
   (a) What this administrative regulation does: Reimburses state employees' travel expenses
   (b) The necessity of this administrative regulation: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate administrative regulations relating to eligibility, requirements, rates, and forms for reimbursement of travel expenses and other expenses incidental to official activities out of the State Treasury.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies eligibility, requirements, rates, and forms for reimbursement of travel and other official expenses out of the State Treasury. This administrative regulation specifies eligibility, requirements, rates, and forms for reimbursement of travel and other official expenses out of the State Treasury.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies eligibility, requirements, rates, and forms for reimbursement of travel and other official expenses out of the State Treasury.
   (e) 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 increase the mileage reimbursement for state employee use of personal vehicles to $38 per mile temporarily until the rate is recalculated for the period beginning
October 1, 2005 In accordance with the regulation currently in place.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to fairly reimburse employees for the use of their personal vehicles because of the rapid increase in gasoline prices, which currently average over $2.50 per gallon. The rate is calculated quarterly, and was last calculated for the period beginning July 1 through September 30, 2005, before the drastic increase in the cost of gasoline. If the rate is currently calculated according to the formula in the regulation, the mileage reimbursement rate for the use of personal vehicles would be $3.38 per mile.

(c) How the amendment conforms to the content of the authorizing statute: This amendment to the administrative regulation specifies the rate for mileage reimbursement.

(d) How the amendment will assist in the effective administration of the statute: This emergency regulation will amend existing language in the regulation to increase the mileage reimbursement in order to fairly reimburse employees for the use of their personal vehicles on state business.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the Executive Branch of State Government, except state-supported universities. It shall not apply to the Legislative and Judicial branches and their employees.

(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: Employees' reimbursement for the use of their personal vehicles will be temporarily increased from $35 per mile to $38 per mile until the next quarterly reimbursement rate is calculated for the period beginning October 1, 2005 based on the American Automobile Association Daily Fuel Gauge Report for Kentucky.

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

(a) Initially: Administrative costs should be minimal. The increase in the mileage rate reimbursed for the use of personal vehicles is expected to cost between $93,750 and $112,500.

(b) On a continuing basis: This emergency regulation will only be in force temporarily until the next mileage rate is calculated for the period beginning October 1, 2005.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Various governmental sources.

(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. The additional costs will come from existing agency funds.

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all regulated entities.

STATEMENT OF EMERGENCY
200 KAR 26:010E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to enable applications to the Kentucky Gas Pipeline Authority to be received as soon as possible. Due to the shortages being experienced in the energy markets, it is in the state's best interest to start evaluating applications for projects, which may help Kentucky to avoid such shortages in the future. In addition, any approved projects are expected to increase severance tax revenue for Kentucky, create jobs for Kentuckians, and create a competitive advantage in the energy market. The emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The emergency administrative regulation and the accompanying ordinary administrative regulation are identical.

ERINIE FLETCHER, Governor
JOHN FARRIS, Deputy Secretary
For ROBERT B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Kentucky Gas Pipeline Authority
(New Emergency Administrative Regulation)

200 KAR 26:010E. KGPA Operating procedures.
RELATES TO: KRS 353.750 - 353.776
STATUTORY AUTHORITY: KRS 353.754(5)
EFFECTIVE: September 8, 2005
NEECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Gas Pipeline Authority was created pursuant to KRS 353.750 to provide a financing mechanism for the construction, reconstruction, improvement, or repair of any gas pipeline or appurtenant facilities. KRS 353.754(5) provides that the authority shall promulgate administrative regulations for guidance and control of its business and affairs. This administrative regulation establishes the operating procedures for the Kentucky Gas Pipeline Authority.

Section 1. Definitions. (1) "Full-time job" means a position filled by an employee (excluding contract or part-time employees) that the company projects will work, on an annual basis, 1,820 hours.

(2) "KGPA" means the Kentucky Gas Pipeline Authority, created and established by KRS 353.750.

(3) "KPABAC" means the Kentucky Private Activity Bond Allocation Committee, created and established by KRS 103.286.

(4) "Project" is defined in KRS 353.750(5).

Section 2. Application Process. (1) Eligible projects may be financed by the issuance of industrial revenue bonds by the KGPA pursuant to an agreement between the KGPA and the applicant related to the project.

(2) Before filing an application requesting the issuance of industrial revenue bonds by the KGPA, an applicant shall contact:

(a) Bond counsel to determine if financing by the KGPA is feasible and any relevant federal tax issues associated with the issuance of any industrial revenue bonds for the project;

(b) The KPABAC if the bond issue qualifies as a private activity bond and the applicant intends to request an allocation of a portion of the state private activity bond volume cap;

(c) Potential underwriters, to receive a commitment to purchase the bonds, if the issue is to be publicly sold; or

2. Other purchasers, to receive a commitment to purchase the bonds, if the issue is to be privately placed;

(d) Governmental entities that will be impacted by expected lost property tax revenues as a result of the proposed bond issue.

(3) An applicant requesting the issuance of industrial revenue bonds by the KGPA shall submit an application using the KGPA Application. The application shall be submitted to the KGPA at least ninety (90) days prior to the anticipated date of issuance of the industrial revenue bonds, and shall be accompanied by:

(a) A $500 nonrefundable application fee;

(b) Resolutions or other documents of support from governmental entities impacted by expected lost property tax revenues as a result of the proposed bond issue; and

(c) A KGPA New Bond Issue Report.

Section 3. Evaluation Criteria. The following criteria may be considered by the KGPA when evaluating a project application and issuance of industrial revenue bonds for the project:

(1) Number of new full-time jobs expected to be created or retained as a result of the project for which the bonds are to be issued;

(2) Average hourly wage expected to be paid for each full-time job created or retained;

(3) Employee benefits expected to be offered;

(4) Amount of capital investment being made in the project by
the applicant;
(6) Unemployment rate in the county or counties of the proposed project;
(6) State tax incentive programs and grant or loan programs in which
the applicant has previously participated with another project or
is seeking to participate with the proposed project;
(7) Whether the proposed project would be eligible to partici-
pate in a tax incentive, grant, or loan program offered under KRS
Chapter 148 or 154;
(8) New tax revenues which the applicant anticipates will be
produced by the project over the life of the bond issue, i.e.
severance tax revenue, corporate income tax, sales tax, occupational
tax, etc.;
(9) Approximate amount and percentage of state and local ad
valorem taxes expected to be lost as a result of the applicant leas-
ing all or a portion of the project from the KGPA;
(10) Whether the proposed project will result in an increase in
current user rates; and
(11) Whether the rate structure will be regulated by the Ken-
tucky Public Service Commission or any other public regulatory
body.

Section 4. Approval Process. (1) The KGPA shall evidence its
approval or disapproval of the proposed project and related bond
issue through the adoption of a resolution authorizing the project
and issuance, execution, and delivery of the bonds. The resolution
shall also approve any related lease agreement, loan agreement,
or similar agreement, and authorize the appropriate officials of the
KGPA to negotiate the terms of and execute any such agreement.
A copy of the resolution shall be sent to the applicant.
(2) Sale of the bonds shall not occur before receipt of the
resolution.
(3) As a condition of approval of the proposed bond issuance,
the KGPA shall require the execution and delivery of a lease
agreement, loan agreement, or similar agreement between the
applicant and the KGPA providing for or relating to the financing
of the construction, reconstruction, improvement, or repair of the
project, if the applicant will be leasing all or a portion of the
industrial project from the KGPA.
(4) Upon approval of the project by the KGPA and prior to any
bonds being issued for the project:
(a) An applicant shall seek final approval by the applicable
regulatory body or authority; and
(b) The listed entities shall review and approve the proposed
bond issue:
1. State Property and Buildings Commission (SPBC), pursuant
   to KRS 56.450;
2. Capitol Projects and Bond Oversight Committee, pursuant to
   KRS 48.100, and
3. Office of Financial Management in the Office of the Control-
   ler within the Finance and Administration Cabinet, pursuant to KRS
   42.420.
(d) The Secretary of the Finance and Administration Cabinet
shall certify that the issuance of revenue bonds in relation to the
project and the terms of the issue shall not require an appropriation
of state general funds, in accordance with KRS 56.870(3).
(5) The applicant shall complete a KGPA Bond Information
Disclosure Form and submit it to the Office of Financial Manage-
ment no later than five (5) days after the bond or note sale.

Section 5. Reporting Requirements. (1) By January 1 of each
year, the KGPA shall make an annual report of its activities for the
preceding fiscal year to the Office of the State Budget Director and
to the Interim Joint Committee on Appropriations and Revenue.
Each report shall set forth a complete operating and financial
statement covering its operations during the fiscal year.
(2) The KGPA shall provide for an audit of its books and ac-
counts to be made within ninety (90) days after the close of each
fiscal year by certified public accountants, and the cost of the audit
may be treated as a part of the cost of construction of the project.

Section 6. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
(a) "KGPA Application (B05)";
(b) "KGPA New Bond Issue Report (B05)"; and
(c) "KGPA Bond Information Disclosure (B05)".
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Finance and Administration
Cabinet, Office of the Secretary, Room 333 Capitol Annex, Frank-
fort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN R. FARRIS, Deputy Secretary
For R. B. RUDOLPH, JR., Chair
APPROVED BY AGENCY: September 7, 2005
FILED WITH LRC: September 8, 2005 at 3 p.m
CONTACT PERSON: Kristen Webb, Legislative Director, Fi-
nance and Administration Cabinet, Office of the Secretary, Room
333 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-
4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristen Webb
(1) Provide a brief summary of:
(a) What this administrative regulation does. This administra-
tive regulation establishes the operating procedures for the Ken-
tucky Gas Pipeline Authority.
(b) The necessity of this administrative regulation: The Ken-
tucky Gas Pipeline Authority was created pursuant to KRS 353.750
to provide a financing mechanism for the construction, reconstruc-
tion, improvement, or repair of any gas pipeline or appurtenant
facilities. KRS 353.754(5) provides that the authority shall promul-
gate administrative regulations for the conducting of its business
and affairs.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: This administrative regulation estab-
lishes the operating procedures for the Kentucky Gas Pipeline
Authority, in accordance with KRS 353.754.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: The adminis-
trative regulation sets out the application and approval processes
for qualified projects.
(2) If this is an amendment to an existing administrative regu-
lation, 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 administra-
tion of the statutes: N/A
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: This administrative regulation may affect local gov-
ernments, school districts, and other special taxing districts (i.e.
tax districts and library 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: There
will be a potential for loss of property tax revenues for local gov-
ernments and other taxing districts; and an increase in severance
tax revenues for the state.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: Minimal
(b) On a continuing basis: Minimal
(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Ap-
propriations to the Finance and Administration Cabinet.
(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 increased
funding will be necessary.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: A $500
nonrefundable application fee is established.
(9) TIERING: Is tiering applied? No, the procedures set out in
VOLUME 32, NUMBER 4 – October 1, 2005

STATEMENT OF EMERGENCY
302 KAR 70:020E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to alleviate the increasing motor fuel shortage and allow older retail fuel dispensers, which cannot compute a total unit price above 2.999, to price motor fuel in gallon or half-gallon increments, while modification kits are installed to correct the display problem. It is necessary to promulgate this administrative regulation on an emergency basis, because the normal process cannot timely accommodate the situation created by the increasing motor fuel shortage. This shortage has resulted in an unprecedented price increase. Requiring older retail fuel dispensers, which have existing fuel supplies, to shut down while modification kits are ordered will artificially reduce supply and increase motor fuel shortage. This emergency administrative regulation will allow consumers some relief by increasing as opposed to restricting motor fuel supply, while modification kits are installed; however, this emergency administrative regulation does not suspend the statutory duty under KRS 363.760 for a retail facility to fully inform a consumer about the price at which motor fuel may be purchased at a particular fuel dispenser. This emergency administrative regulation will expire on October 15, 2005 and will not be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
RICHIE FARMER, Commissioner

DEPARTMENT OF AGRICULTURE
(Formerly Emergency Administrative Regulation)

RELATES TO: KRS 363.900-363.908
STAFFATORY AUTHORITY: KRS 363.902, 363.590
EFFECTIVE: September 2, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the Commissioner of the Department of Agriculture to implement and administer an inspection and testing program for motor fuels. KRS 363.590(3) requires that the National Bureau of Standards Handbook 44 is used to establish specifications for commercial weighing and measuring devices, except insofar as specifically modified by administrative regulation. The net effect is to prohibit pricing other than that which displays and computes the total unit price on retail fuel dispensers. This emergency administrative regulation temporarily suspends this restriction, solely to alleviate the increasing motor fuel shortage and allow older retail fuel dispensers which cannot compute a total unit price above 2.999, to price motor fuel in gallon or half-gallon increments, while modification kits are installed to correct the display problem; however, this emergency administrative regulation does not suspend the statutory duty under KRS 363.760 for a retail facility to fully inform a consumer about the price at which motor fuel may be purchased at a particular fuel dispenser.

Section 1. Application. (1) Retail fuel dispensers, which cannot compute a total unit price above 2.999, shall be allowed to price motor fuel in gallon or half-gallon increments, at a price other than that displayed and computed on the actual fuel dispenser, except:
(a) All other requirements under law shall remain in effect;
(b) Pursuant to KRS 363.760, the retail facility shall prominently display the actual unit of measurement and actual price per unit at which each grade of gasoline or diesel fuel is being dispensed, in plain, clear, conspicuous, and legible view of the consumer on all signage displaying the price and the pump itself and shall not display an octane number and the actual price per unit and;
(c) The retail facility shall install modification kits to correct the display problem no later than October 15, 2005.

(2) This emergency administrative regulation shall remain in effect until October 15, 2005.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: September 2, 2005
FILED WITH LRC: September 2, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on October 21, 2005, at 10 a.m. at the Department of Agriculture, Frankfort, Kentucky 40601. Individuals interested in being heard at this 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 October 14, 2005, 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 October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Farrow, 32 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-5126, fax (502) 564-5016.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark Farrow

(1) Provide a brief summary of:
(a) What this administrative regulation does: This emergency regulation temporarily allows older retail fuel dispensers, which cannot compute a total unit price above 2.999, to price motor fuel in gallon or half-gallon increments, while modification kits are installed to correct the display problem; however, this emergency administrative regulation does not suspend the statutory duty under KRS 363.760 for a retail facility to fully inform a consumer about the price at which motor fuel may be purchased at a particular fuel dispenser.
(b) The necessity of this administrative regulation: The current motor fuel shortage has resulted in an unprecedented price increase. Requiring older retail fuel dispensers, which have existing fuel supplies, to shut down while modification kits are ordered artificially reduces supply and increases the motor fuel shortage. This administrative regulation should allow consumers some relief by increasing, as opposed to restricting, motor fuel supply.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363.590 adopts the National Bureau of Standards Handbook, which prohibits pricing other than that which displays and computes the total unit price on retail fuel dispensers; however, the statute also allows for modification and amendment to these requirements by administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See (1)(b).
(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: Local retail facilities with older fuel dispensers (approximately 10% of current motor fuel retailers in Kentucky) and end consumers.
(4) Provide an assessment of how the above group or groups will be affected by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: See (1)(b).
VOLUME 32, NUMBER 4 – October 1, 2005

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

(a) Initially: Administrative costs of this emergency regulation should be minimal. Retail facilities have to install modification kits under current law anyway.

(b) On a continuing basis: This emergency regulation will only be in force temporarily, until October 15, 2005.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing government resources.

(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 it if it is an amendment: No increase in fees or funding will be necessary. The additional costs will come from existing agency funds.

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all regulated entities.

STATEMENT OF EMERGENCY

803 KAR 25:009E

The Office of Workers’ Claims must amend this administrative regulation by emergency to comply with a ruling by the Kentucky Supreme Court in Hunter Excavating v. Bartrum, 2004-SC-0465-WC, petition for reconsideration denied. The case found that 803 KAR 25:009(3)(1) exceeds its statutory authority by prohibiting additional x-rays and reports from being submitted to rebut a consensus. The changes are necessary to assure this administrative regulation is constitutional and allows for an additional x-ray for the parties. Our current administrative regulation has been unconstitutional and insufficient by the Kentucky Supreme Court. This emergency regulation will be replaced by an ordinary administrative regulation, and is identical to the ordinary administrative.

ERNIE FLETCHER, Governor
WILLIAM P. EMRICK, Executive Director

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
 Department of Labor
Office Of Workers’ Claims
(Emergency Amendment)

803 KAR 25:009E. Procedure for adjustment of coal workers’ pneumoconiosis claims.

RELATES TO: KRS 342.250, 342.316, 342.732, 342.792, 342.794, 342.796

STATUTORY AUTHORITY: KRS 342.250(1), 342.316(3)(a), 342.732(5), 342.792

EFFECTIVE: September 9, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.250(1) requires the executive director [commissioner] to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.316(3)(a) requires the executive director [commissioner] to prescribe the format of the medical report required for claim resolution. KRS 342.732(5) requires the executive director [commissioner] to promulgate an administrative regulation relating to retaining incentive benefits for coal workers’ pneumoconiosis. KRS 342.720(3) requires that the executive director [commissioner] promulgate an administrative regulation to establish procedures for the resolution of claims. This administrative regulation establishes the requirements and procedure for adjustment of coal workers’ pneumoconiosis claims.

Section 1. Definitions. (1) "ALOSH" means Appalachian Lab for Occupational Safety and Health.

(2) "B reader" is defined in KRS 342.794(3) which includes current certification with NIOSH or ALOSH.

(3) "Coal workers' pneumoconiosis" means a coal-related occupational pneumoconiosis which:

(a) Results from an accumulation of carbon and silica in the lungs from the inhalation of coal dust in the severance and processing of coal; and

(b) Is also known as anthracosilicosis or black lung.

(4) "Consensus" is defined in KRS 342.316(3)(b)4f.

(5) "Director" means the Director of the Division of Workers’ Compensation Funds.

(6) "Executive Director" means the Executive Director of the Office of Workers’ Claims.

(7) "ILC" means International Labor Organization.


Section 2. Application, Response, and Consensus Process. (1) To apply for resolution of a coal workers’ pneumoconiosis claim pursuant to KRS 342.732, the applicant shall file Form 102-CWP with the following completed attachments:

(a) LIO form completed by a "B" reader;

(b) The original x-ray interpreted by the "B" reader whose report is attached to Form 102-CWP;

(c) Work History (Form 104) to include:

1. All past jobs performed on a full- or part-time basis within twenty (20) years preceding the date of last exposure; and

2. All jobs in which the plaintiff allows exposure to coal dust;

(d) Medical History (Form 105) to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, hospitals or other medical facilities where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals treating any pulmonary or respiratory condition;

(e) Medical Release (Form 106);

(f) If pulmonary dysfunction is alleged, a medical report from a physician, including spirometric tests performed and tracings; and

(g) Social Security Release Form (Form 115).

(2) Within forty-five (45) days of the receipt of notice of the claim that has been assigned to an administrative law judge, the employer shall file the following:

(a) LIO form representing an interpretation of an x-ray by a "B" reader; and

(b) Original x-ray interpreted by the "B" reader.

(3) Within fifteen (15) days of the receipt of the defendant’s x-ray interpretation and x-ray, the executive director [commissioner] shall issue a notice to the parties stating whether consensus has been reached.

(a) If there is consensus:

1. The executive director [commissioner] shall issue a scheduling order; and

2. The defendant shall have thirty (30) days from the notice of consensus to file its notice of claim acceptance or denial on a Form 111-OD.

(b) If consensus has not been reached, the executive director [commissioner] shall forward the x-rays consecutively to three (3) "B" readers licensed in the state of Kentucky.

(4) The executive director [commissioner] shall make a determination of consensus within fifteen (15) days of receiving the three (3) "B" reader reports.

(a) The executive director [commissioner] shall issue a notice of whether consensus is reached within fifteen (15) days of receiving "B" reader reports.

(b) Once a determination of whether consensus is met, a scheduling order shall be issued.

(c) Within thirty (30) days of the consensus notice issued by the executive director [commissioner], the defendant shall file its notice of claim acceptance or denial on Form 111-OD.

(5) Upon the executive director’s [commissioner’s] notification of completion of the consensus process, the applicant shall have thirty (30) days in which:

(a) To amend the claim to allege pulmonary impairment; and

(b) To submit a medical report supporting that allegation and pulmonary function tests.

(c) If pulmonary impairment is alleged as a part of the application for adjustment of a coal workers’ pneumoconiosis claim or upon amendment of the claim:
The defendant shall have the right to a pulmonary examination by a physician of its own choosing; and
(b) The examination shall not be conducted until completion of the consensus process.

(7) Within thirty (30) days of notice that consensus has been reached by the executive director [commissioner], a party may challenge consensus by written notification to the office [department] opposing process.

(8) At the benefit review conference or no later than ten (10) days prior to a scheduled hearing, whichever is later, a claimant who was age fifty-seven (57) or older as of the date of last exposure shall individually or through counsel inform the administrative law judge in writing of the desire to opt for a twenty-five (25) percent permanent partial disability award instead of retaining incentive benefits, if that award is appropriate under KRS 342.732.

(3) A miner who is otherwise eligible for a twenty-five (25) percent permanent partial disability pursuant to KRS 342.732 may exercise his one (1) time option to choose retaining incentive benefits instead of the permanent partial disability award by filing with the administrative law judge in writing his desire to do so prior to the finality of the administrative law judge's decision.

Section 3. Discovery and Evidence. (1) The parties may [shall not] submit one (1) any additional x-ray reading of one (1) of the original x-rays submitted by the parties as stated in Section 2 of this administrative regulation [readings except what is required by Section 2 of the administrative regulation].

(2) The x-ray readings submitted by the plaintiff, defendant and, if applicable, the three (3) "B" readers shall be the only x-ray readings considered as evidence by the administrative law judge.

(3) The three (3) "B" reader reports obtained by the office [department] shall be admitted into evidence without the necessity of a notice of filing by any party.

Section 4. Medical Reports in the Consensus Process. (1) Only x-ray reports from "B" readers shall be admissible into evidence.

(a) Medical reports submitted from the plaintiff or defendant shall include:
(a) A CV or medical qualifications index number for the physician; and
(b) A certification that the physician maintains current "B" reader status.

(3) If consensus is not reached initially with the reports of the physicians submitted by the plaintiff and defendant, the executive director [commissioner] shall:
(a) Send the x-rays consecutively to the three (3) "B" readers on a random basis; and
(b) Insure that the "B" readers selected did not provide an initial reading for the plaintiff or defendant.

(4) "B" readers selected by the executive director [commissioner] shall:
(a) Submit the report on the ILO form; and
(b) Return the completed report to the Office [Department] of Workers Claims with the x-rays within twenty (20) days of the date it was sent to the physician.

(5) If consensus is challenged by a party, the administrative law judge may allow timely cross-examination of a medical evaluator that participated in the consensus process at the expense of the moving party.

Section 5. (1) This section shall apply to consideration of the following:
(a) Claims with a last exposure date between December 12, 1996 and July 14, 2002, or
(b) Claims in which the last exposure was prior to December 12, 1996 but was subject to a university evaluation pursuant to KRS 342.315(2) and dismissed upon a finding that the miner did not prove the presence of coal workers' pneumoconiosis.

(2) Any party seeking reconsideration of a claim in accordance with the provisions of KRS 342.732 shall file a motion to reopen which may be on Form MTI-2.

(3) The motion to reopen shall be accompanied by the following:
(a) A current medical release Form 106 executed by the plaintiff;
(b) An affidavit which states:
1. The date of last exposure;
2. The claim is appropriate for consideration pursuant to the retroactive provisions of KRS 342.732;
3. The claim was not dismissed upon grounds other than failure to meet medical eligibility standards; and
4. If the last exposure was prior to December 12, 1996, the prior claim was dismissed upon a finding the miner did not prove the presence of coal workers' pneumoconiosis radiographically;
(c) If an award was granted under the provisions of KRS 342.732 in effect prior to July 15, 2002:
1. A statement of the amount awarded and benefits actually received; and
2. A copy of the previous award or, if settled, a copy of the Form 110 and any accompanying documents;
(d) An updated work history (Form 104); and
(e) An updated medical history (Form 105).

(4) If the requirements of subsections (1) and (3) of this section have not been met, an administrative law judge shall issue an order summarily dismissing the motion to reopen.

(5) If a motion to reopen is filed, and an administrative law judge determines that the requirements in subsections (1) and (3) of this section have been met, the executive director [commissioner] shall:
(a) Obtain the original x-ray or x-rays performed at the university medical schools pursuant to KRS 342.315 and provide it to three (3) "B" readers licensed in the state of Kentucky who have agreed to participate on the consensus "B" reader list; and
(b) Insure that a university "B" reader who offered an interpretation of the x-ray in the original claim is excluded from the consensus interpretations.

(6) Within fifteen (15) days of receipt of the three (3) "B" readers' reports, the executive director [commissioner] shall:
(a) Issue notice to the parties as to whether consensus has been reached; and
(b) Assign it to an administrative law judge for determination of whether a prima facie showing of entitlement to greater benefits has been made.

(7) If an administrative law judge finds a prima facie showing of entitlement to greater benefits, the executive director [commissioner] shall:
(a) Issue notice scheduling the matter for a prehearing conference, and
(b) Issue a scheduling order for the presentation of proof to the parties.

(8) Additional x-ray readings or pulmonary function studies shall not be submitted as evidence for consideration by the administrative law judge.

(9) If consensus has been reached, the parties shall have thirty (30) days to notify the office [department] and opposing parties of intent to challenge consensus.

(10) If the prior claim was settled, a statement contained in the agreement as to jurisdiction, coverage under KRS Chapter 342, liability of the employer, or nature and extent of disability shall not be considered by the administrative law judge as an admission against interest.

Section 6. Use of American Medical Association's "Guides to the Evaluation of Permanent Impairment" in Coal Workers' Pneumoconiosis Cases. (1) Predicted normal values for FVC and FEV1 shall be determined in accordance with the latest edition of the American Medical Association Guide. Age shall be determined as of the date of the evaluation. Height shall be measured while the patient stands in his stocking feet and shall be rounded to the nearest centimeter. If the patient's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

(2) Formulas established by the guidelines for predicted normal FVC and FEV1 shall be applied and predicted values computed.

Section 7. Request for Participation by the Kentucky Coal Workers' Pneumoconiosis Fund. (1) Following a final award or
order approving settlement of a claim for coal workers' pneumoconiosis benefits pursuant to KRS 342.729, the employer shall file a written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund within thirty (30) days and shall serve copies of the request on all other parties.

(2) A written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund shall be in writing and include the following documents:

(a) Plaintiff's application for resolution of claim;
(b) Defendant's notice of resistance, notice of claim denial or acceptance, and any special answer;
(c) All medical evidence upon which the award or settlement was based;
(d) The notice of consensus issued by the executive director [commissioner], if rendered;
(e) Final opinion or order of an administrative law judge determining liability for benefits or settlement agreement and order approving settlement agreement;
(f) If an administrative law judge's award was appealed, the appellate opinions; and
(g) If the request for participation includes retracting incentive benefits under KRS 342.732, a certification by the requesting party that the plaintiff meets the relevant statutory criteria.

(3) If the request for participation is based upon the settlement of a claim, the employer shall submit a Form 110-CWP settlement agreement that represents liability exclusively for coal workers' pneumoconiosis benefits, and does not include any sums for other claims which the plaintiff may have against the employer.

(4) In claims arising under KRS 342.792, if the employer fails to submit a request for participation within thirty (30) days of the final award or order approving settlement, the plaintiff or an administrative law judge may file a written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund within sixty (60) days of the final award or order approving settlement.

(5) Within thirty (30) days following receipt of a completed request for participation, the director of the Kentucky Coal Workers' Pneumoconiosis Fund shall notify the employer and all other parties of acceptance or denial of the request.

(6) A denial shall be in writing and based upon any of the following findings by the director:

(a) Failure to file a written request for participation within the time limits specified in this administrative regulation without good cause;
(b) The employer failed to defend the claim;
(c) The employer entered into a settlement agreement not supported by the medical evidence, or which includes sums for claims other than coal workers' pneumoconiosis or which was procured by fraud or mistake; or
(d) The award or settlement was for retracting incentive benefits and the request for participation did not include the training or education certification required by this administrative regulation.

(7) Denial of a request for participation may be appealed by any party to an administrative law judge within thirty (30) days following receipt of the denial.

(8) The administrative law judge shall:

(a) Determine if the denial was arbitrary, capricious, or in excess of the statutory authority of the director; and
(b) Not reassess the weight assigned to evidence by an administrative law judge in an award.

(9) Except in claims under KRS 342.792, the employer shall promptly commence payment on all of the liability pursuant to the award or order and shall continue until the liability of the Kentucky Coal Workers' Pneumoconiosis Fund is established.

(a) This duty of prompt payment shall continue during pendency of an appeal from denial of a request for participation.
(b) In claims arising from KRS 342.792, the Kentucky Coal Workers' Pneumoconiosis Fund shall promptly commence payment upon its acceptance of the claim.

(10) (a) Except in claims under KRS 342.792, upon an appeal from the denial of a request for participation, if the Kentucky Coal Workers' Pneumoconiosis Fund does not prevail, it shall reimburse the employer for its proportionate share of the liability with interest accrued from the date of denial.

(b) In an appeal of a denial in a claim arising under KRS 342.792, in which the Kentucky Coal Workers' Pneumoconiosis Fund does not prevail, the fund shall commence payment pursuant to the opinion and award or order approving settlement with interest accrued from the date of the denial. All interest shall be paid at the rate established in KRS 342.040.

Section 8. Any procedures not specifically set forth in this administrative regulation shall be governed by the guidelines set forth in 803 KAR 25:010, Procedure for adjustments of claims.

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

(a) Form 102-CWP, Application for Resolution of Coal Workers' Pneumoconiosis Claim (June 2003 [July 2006] Edition);
(b) Form 104, Plaintiff's Employment History (January 1, 1997 Edition);
(c) Form 105, Plaintiff's Chronological Medical History (January 1, 1997);
(d) Form 106, Medical Waiver and Consent (January 1, 1997);
(e) Form 115, Social Security Release (January 1, 1997 Edition);
(f) ILO Form;
(g) Form 111-OD, Notice of Claim Denial or Acceptance (January 1997 Edition);
(h) Form 110-CWP, Agreement As To Compensation and Order Approving Settlement (July 2002 Edition); and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Workers' Claims, Prevention Park, 657 To Be Announced Avenue, Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4 p.m.

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: September 8, 2006
FILED WITH LCS: September 9, 2005 at 11 a.m.
CONTACT PERSON: Carla H. Montgomery, General Counsel, Office of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures to administer coal workers' pneumoconiosis claims and retracting incentive benefits
(b) The necessity of this administrative regulation: It is imperative that procedures be set forth to resolve coal workers' pneumoconiosis claims, so injured workers and employers know procedures to handle these claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It meets the requirements of KRS 342.260(1), 342.316(3)(a), 342.720(3), and 342.732(5) by setting forth procedures in coal workers' pneumoconiosis claims.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Office of Workers' Claims and administrative law judges have specific procedures so claims are resolved consistently and efficiently.

(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 conform with the ruling of the Supreme Court of Kentucky and allow an additional x-ray to be submitted. We will also eliminate the imposed limit on evidence considered by administrative law judge.

(b) The necessity of the amendment to this administrative regulation: We must amend the administrative regulation to conform with Supreme Court ruling in Hunter Excavating v. Gordon Barnett, et al., 2004-SG-0485-SC.

(c) How the amendment conforms to the content of the authorizing statutes: The Supreme Court ruled that our current
VOLUME 32, NUMBER 4 – October 1, 2005

STATEMENT OF EMERGENCY

810 KAR 1:01E

Nature of the emergency: Under KRS 230 240(2), the KHRA is charged with the clear and unequivocal responsibility of protecting the integrity of racing by ensuring that horses in Kentucky race free of the taint of illegal drugs or medications. The statute empowers the KHRA to promulgate administrative regulations "restraining or prohibiting the administration or use of any drugs or medications that are improper for horses other than as prescribed in written directions for use by a licensed veterinarian..." The administrative regulation further charges the KHRA with the duty to ensure that horses are relabeled tested for the presence of drugs and stimulants. The KHRA is empowered to "acquire, operate, and maintain, or contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of collecting samples, and to purchase supplies and equipment for and in connection with the laboratory or testing processes." There is nothing more critical to the integrity of racing, and to the physical safety of those participating in it, than the knowledge and assurance that horses do not carry in their bodies while racing any illegal or improper drugs, medications or substances. The dangers to the jockeys who ride these magnificent animals, as well as to the horses themselves, could not be more apparent. An animal that is improperly or illegally drugged or medicated is a hazard to the health and safety of every jockey on the racetrack.

Moreover, the betting public is entitled to rely on the fact that every horse entered in a race is fit to run and true to form. Presently, there exists in Kentucky a genuine and very real state of emergency regarding the rules and administrative regulations as they pertain to the drugs and medications that can be administered to thoroughbred horses on the day of a race. In practicality, there is simply no effective or enforceable rule or administrative regulation on the books at the moment. This is a situation that demands immediate attention. The present administrative regulation governing drugs and medications, 810 KAR 1:018, read strictly, would essentially prohibit almost every drug and medication from being administered to horses on the day of a race. The regulation is far outside the mainstream of most other racing jurisdictions. Even Lasix, a medication almost universally accepted in racing circles, would arguably be prohibited under the present regulation as it is currently written. In response to the inadequacy of the present regulation, the former Kentucky Racing Commission, in 2002, issued an internal policy memorandum that allowed various drugs and medications to be administered to horses not less than four (4) hours prior to post time. That internal policy, although recognized throughout the racing industry in Kentucky and purportedly enforced by the former Racing Commission, in actuality was a legal nullity since the policy clearly contradicted the existing regulation. Under KRS 13A.130, an internal policy may not modify, expand or limit an existing administrative regulation, and any policy that has such an effect is null and void. Therefore, the Racing Commission was implementing and attempting to enforce a policy that actually had no legal viability. Additionally, the policy was far too lenient in terms of allowing drugs and medications to be administered to horses close to post time. While the administrative regulation was far too stringent, the policy that was instead being implemented was far too lenient and resulted in Kentucky being perhaps the most liberal and lax racing jurisdiction in the country in terms of race day medications. This is a situation that must be rectified immediately, and this far-reaching and comprehensive emergency regulation seeks to do just that. This emergency administrative regulation will have the direct effect of protecting human health; specifically, the health of the jockeys who ride thoroughbred horses. The importance of this regulation cannot be overemphasized. If the safety of jockeys on Kentucky's racetracks is to be protected, it is imperative that an administrative regulation be in effect that clearly and effectively addresses this issue. The reasons an ordinary administrative regulation is not sufficient: An ordinary amendment is not sufficient in this instance because there is simply does not presently exist in Kentucky any effective and realistic rule regulating drugs and medications that can be administered to thoroughbred horses on the day of a race. The present administrative regulation, as set out above, is far too restrictive and impractical for the racing industry while the policies that have been implemented as an alternative are far too lenient. The present situation is totally intolerable and until this emergency regulation is in effect and carries the force of law, Kentucky is incapable of adequately policing the racing industry in this state and ensuring, to the extent possible, the physical safety of jockeys who ride thoroughbred horses. It is vital that this emergency amendment to the drug and medication regulation be in effect before the beginning of the next thoroughbred race meeting in Kentucky. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler at the time this emergency amendment is filed. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
WILLIAM STREET, Chairman

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
( Emergency Amendment )

810 KAR 1:018E. Medication; testing procedures; prohibited practices.


EFFECTIVE: August 15, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215, 230.260, and 230.320 authorize [grant] the Kentucky Horse Racing Authority [Commission] authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. This administrative regulation governs the use of drugs, medications, and substances in [medication-on] horses and certain practices relating to horses and race tracks. The regulation establishes requirements and controls in the administration of drugs, [or] medications, and substances and certain prohibited practices.
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Section 1. Use of Medication. Therapeutic measures and medication required to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

1. Except as otherwise provided in this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, [drug], substance, or metabolic derivative, that:
   (a) is a narcotic;
   (b) Could serve as a (a) local anesthetic or tranquilizer; or
   (c) Could stimulate, [ad] depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse[, thereby affecting its speed].
2. A medication, drug, substance, or metabolic derivative thereof that might mask or screen the presence of prohibited drugs, or prevent or delay testing procedures shall be prohibited.

3. Therapeutic medications in excess of established thresholds set forth in this administrative regulation shall be prohibited.

4. Substances present in a horse in excess of concentrations at which substances could occur naturally shall be prohibited.

5. It shall be prima facie evidence that a horse had been administered and carried a drug, medication, [drug], substance, or metabolic derivative thereof, prohibited by this section (subsection(1) of the section (6) as body), while running a race, if:
   (a) A saliva, urine, blood, or other sample or specimen from the horse was taken under the supervision of the Authority [commissioner] veterinarian promptly after a horse ran in a race; and
   (b) The Authority Laboratory [commissioner-changed] detected a drug, medication, [drug], substance or metabolic derivative thereof prohibited by subsection(4) of this section

Section 2. Treatment Restrictions. (1) Except as provided in this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Authority shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the Authority.

2. A person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Authority shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the Authority unless otherwise approved by the Authority.

3. Veterinarians licensed to practice veterinary medicine in this jurisdiction and licensed by the Authority shall use only one (1) times disposable needles, and shall dispose of them in a manner approved by the Authority.

4. If a person has a medical condition which makes it necessary to have a needle and syringe at a location under the jurisdiction of the Authority, such person may request permission of the steward or the Authority and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards or the Authority may, in their discretion, grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the Authority but may establish necessary restrictions and limitations.

5. An Authority employee may accompany a veterinarian at a location under the jurisdiction of the Authority and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 3. Furosemide and Adjuvant Bleeder Medication. Use on Racetrack. (1) Furosemide may be administered to a horse that is entered to compete in a race.

2. The use of furosemide shall be permitted under the following circumstances:
   (a) Furosemide shall be administered on the grounds of a location under the jurisdiction of the Authority, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.
   (b) The syringe employed in the injection shall be made available immediately to the Authority veterinarian, steward, or Authority employee if requested.
   (c) The furosemide dosage administered shall not exceed 500 mg, nor be less than 150 mg.

(d) The specific gravity of post-race urine samples shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in serum or plasma shall be performed. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(e) A horse that is on the furosemide list pursuant to Section 4 of this administrative regulation that does not show a detectable concentration of the drug in the post-race urine, plasma, or serum shall be in violation of the administrative regulation.

3. Up to two (2) of the following adjuvant bleeder medications may be administered to a horse not less than four (4) hours prior to post time for the race in which the horse is entered:
   (a) Ariminoacrolein acid;
   (b) Carboxacrine;
   (c) Congestive agents; and
   (d) Tranexamic acid.

4. The adjuvant bleeder medications listed in subsection (3) of this section shall not be administered after December 31, 2006, unless:
   (a) Scientific evidence, to the satisfaction of the Authority, is provided to demonstrate the efficacy of such medications in mitigating the incidence of exercise-induced pulmonary hemorrhage.
   (b) This administrative regulation is amended to permit the use of adjuvant bleeder medications listed in this section.

Section 4. Furosemide List. (1) A horse shall be eligible to race with furosemide if the licensed trainer or veterinarian determines that it would be in the horse's best interest to race with furosemide.

2. Notification using prescribed Authority forms shall be provided to the Authority veterinarian in sufficient time to ensure public notification.

3. Horses placed on the furosemide list and entered to start may be monitored by an Authority-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

4. A horse placed on the furosemide list shall remain on the list unless the licensed trainer or veterinarian submits a written request to remove the horse from the list. The request shall be in forms provided by the Authority veterinarian and shall be submitted to the Authority-approved representative not later than time of entry.

5. After a horse has been removed from the furosemide list, the horse shall not be placed back on the list for a period of sixty (60) calendar days unless it is determined by the trainer or veterinarian, in consultation with the Authority veterinarian, that it is detrimental to the welfare of the horse not to be on the furosemide list.

6. If a horse is removed from the furosemide list a second time in a three hundred sixty-five day period, the horse shall not be placed back on the list for a period of ninety (90) calendar days.

7. A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be placed on the furosemide list in this jurisdiction.

Section 5. Permitted Nonsteroidal Anti-inflammatory Drugs (NSAID's). (1) The use of one (1) of the following NSAID's shall be permitted by a single intravenous injection not less than twenty-four (24) hours before post time for the race in which the horse is entered provided the concentration in the horse's sample or specimen does not exceed the following levels when tested post race:
   (a) Phenylbutazone - not to exceed five (5) micrograms per milliliter of plasma or serum;
   (b) Flunixin - not to exceed twenty (20) nanograms per milliliter of plasma or serum;
   (c) Ketoprofen - not to exceed ten (10) nanograms per milliliter of plasma or serum.

2. NSAID's other than those designated in subsection (1) of this section shall be prohibited.

3. The administration of more than one (1) permissible NSAID shall be considered a violation of this section.
(b) A finding of phenylbutazone below a concentration of one microgram per milliliter of plasma or serum shall not constitute a violation of this section.

(4) A horse that has been administered a NSAID shall be subject to a saliva, urine, blood, or other sample or specimen being taken under the supervision of the Authority veterinarian to determine the quantitative NSAID level present in the horse or the presence of other drugs in the horse.

Section 6. Detention Area. (1) A licensed association shall provide and maintain on association grounds a detention area.

(2) The detention area shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of sample specimens for pre-race and post-race testing.

(3) The detention area shall be under the supervision and control of the Authority veterinarian.

Section 7. Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the instructions provided by the Authority veterinarian.

(2) An Authority veterinarian shall determine a minimum sample requirement for all samples submitted to the Authority laboratory.

(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the Authority laboratory.

(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the Authority laboratory shall be secured as the split sample.

(d) Blood samples shall be collected not later than one (1) hour post-race.

(3) An owner or trainer may request that a specimen be:

(a) Taken from a horse he owns or trains by the Authority veterinarian.

(b) Tested by the Authority laboratory.

(4) The cost of testing shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and grooming a horse shall not be permitted in the detention barn.

(b) Buckets and water shall be furnished by the Authority veterinarian.

(c) If a body brace is to be used, it shall:

1. Be supplied by the trainer, and
2. Be administered only with the permission and in the presence of the Authority veterinarian.

(d) A licensed veterinarian may attend to a horse in the test barn, but only in the presence of the Authority veterinarian.

(6) Within five (5) business days of receipt of notification by the Authority laboratory of a positive finding, the Authority shall notify the owner and trainer orally or in writing of the initial finding.

(7) The stewards shall schedule a hearing within fourteen (14) calendar days of notification by the Authority to the owner and trainer. The hearing may be continued in the discretion of the stewards.

Section 8. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the samples for shipment to the Authority laboratory until such time as the split samples are packed and secured for shipment to the Authority laboratory. Split samples shall then be transferred to a freezer at a secure location approved by the Authority;

(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer at all times except as specifically provided by this administrative regulation.

(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the Authority veterinarian that shall be used each time a split sample freezer is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, the date the freezer was closed, and verification that the lock was secured prior to and after opening of the freezer. An Authority veterinarian or his or her designee shall be present when the freezer is opened.

(e) Evidence of a malfunction of a split sample freezer or samples that are not in a frozen condition during storage shall be documented in the log and immediately reported to an Authority veterinarian or a designated Authority representative.

(f) A trainer or owner of a horse may request that a split sample corresponding to the portion of the specimen tested by the Authority laboratory be sent to another laboratory approved by the Authority for testing.

(g) The request shall be made in writing and delivered to the stewards within three (3) business days after the trainer or the horse receives oral or written notice of the positive findings of the Authority laboratory.

(h) A split sample so requested shall be shipped as expeditiously as possible.

(i)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of such testing. The Authority shall be responsible for paying the cost of shipping the split sample to the laboratory approved by the Authority for testing.

(b) Failure of the owner, trainer, or a designated person to appear at the time and place designated by the Authority veterinarian shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment, the Authority shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;
2. That the laboratory has agreed to send results to both the person requesting the testing and the Authority; and
3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The Authority shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the Authority.

(e) The cost of testing shall be borne by the owner or trainer requesting the test.

(f) The laboratory is not responsible for any delays in testing or any loss or damage to the samples.

(g) The Authority veterinarian shall be notified of any change in the testing laboratory.

(h) The Authority laboratory shall notify the owner or trainer of the results of the test.

(i) The owner or trainer of a horse may request to review the records of the laboratory conducting the testing.

(j) The Authority laboratory shall maintain records of any request to review laboratory records and notify the Authority of any such request.

Section 9. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer, the Authority shall provide a split sample chain of custody verification form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer;

(b) The sample number;

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer by an Authority employee after notice to the owner, trainer, or designee thereof and an Authority-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the Authority. A form shall be signed by both the owner's representative, if present, and the Authority representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The split sample chain of custody verification form shall be completed and signed by the representative of the Authority and the owner, trainer, or designee, if present.

(5) An Authority representative shall retain the original split sample chain of custody verification form and provide a copy for the owner, trainer, or designee, if present.
Section 10. Medical Labeling. (1) A person on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly-licensed veterinarian in compliance with applicable statutes.

(3) Medications shall bear a prescription label which is securely attached and clearly ascribed to show the following:
(a) The name of the product;
(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;
(c) The name of each horse for which the product is intended or prescribed;
(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and
(e) The name of the trainer to whom the product was dispensed.

Section 11. Trainer Responsibility. (1) A trainer is responsible for the condition of horses in his or her care.

(2) A trainer is responsible for the presence of a prohibited drug, medication, substance or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed, remains responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer is responsible for:
(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;
(b) Using the services of those veterinarians licensed by the Authority to attend to horses that are on association grounds;
(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;
(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;
(e) Promptly reporting to the racing secretary and the Authority veterinarian when a posterior digital flexor tendonitis is performed on a horse in his or her care and ensuring that such fact is designated on its certificate of registration;
(f) Promptly reporting to the racing secretary the names of mares that have been bred and are entered to race;
(g) Promptly notifying the Authority veterinarian of a reportable disease or communicable illness in a horse in his or her care;
(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the Authority to the stewards and the Authority veterinarian and ensuring compliance with this administrative regulation governing postmortem examinations;
(i) Maintaining a medication record and medication status of horses in his or her care;
(j) Promptly notifying the stewards and the Authority veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 16 of this administrative regulation;
(k) Ensuring the fitness of every horse in his or her care to perform credibly at the distance entered;
(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed by these administrative regulations;
(m) Ensuring proper harness, equipment, and shoes;
(n) Ensuring the horse's presence in the paddock at least twenty (20) minutes before post time or at a time otherwise prescribed before the race in which the horse is entered;
(o) Personally attending in the paddock and supervising the saddling of a horse in his or her care, unless excused by the stewards; and
(p) Attending the collection of a saliva, urine, blood, or other sample or specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 12. Licensed Veterinarians. (1) Veterinarians licensed by the Authority and practicing at a location under the jurisdiction of the Authority shall be deemed to be under the supervision of the Authority veterinarian and the stewards. A veterinarian shall report to the stewards or the Authority veterinarian a violation of this administrative regulation.

Section 13. Veterinarians' Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the Authority shall submit a KRC-2 form to the Authority veterinarian containing the following information:
(a) The name of the horse treated;
(b) The type and dosage of drug or medication administered or prescribed;
(c) The name of the trainer of the horse;
(d) The date and time of treatment; and
(e) Other information requested by the Authority veterinarian.

(2) The report shall be signed by the practicing veterinarian.

(3) The report shall be on file not later than the time prescribed on the next race day by the Authority veterinarian.

(4) The report shall be deemed confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards or the Authority, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a veterinarian report that is consistent with the analytical results of a positive test reported by the laboratory approved by the Authority may be used as a mitigating factor in determining the appropriate penalties pursuant to this administrative regulation.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 16 of this administrative regulation shall report such fact immediately to the Authority veterinarian or to the stewards.

Section 14. Veterinarian's List. (1) The Authority veterinarian shall maintain a list of veterinarians determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the Authority veterinarian, the horse is capable of competing in a race.

(3) The Authority veterinarian shall maintain a bleeding list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the Authority veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeding list and be ineligible to race for the following time periods:
(a) First incident - fourteen (14) days;
(b) Second incident within a three hundred sixty-five (365) day period - thirty (30) days;
(c) Third incident within a three hundred sixty-five (365) day period - one hundred eighty (180) days;
(d) Fourth incident within a three hundred sixty-five (365) day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be deemed to be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.
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(7) A horse shall be removed from the bleed list only upon the direction of the Authority veterinarian who shall certify in writing to the stewards the recommendation for removal.

(8) A horse that has been placed on a bleed list in another jurisdiction may be placed on the bleed list maintained by the Authority veterinarian.

Section 15. Distribution of Purses, Ram Searches, and Retention of Samples. (1) Purse money shall be distributed seventy-two (72) hours after a race unless the Authority laboratory has issued a preliminary or final report indicating the presence of a prohibited drug, medication, substance, or metabolite derivative in the saliva, urine, blood, body fluids, or other sample or specimen taken from a horse.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be deemed a finding that no prohibited drug, medication, substance, or metabolite derivative has been administered to a horse.

(3) Upon receipt of a positive laboratory finding, the Executive Director of the Authority or the stewards shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the finding including, but not limited to, a thorough search of the trainer's barn and the interviewing of persons who may have been involved in the incident or have knowledge regarding it.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the Executive Director and Chairman of the Authority detailing the findings of the investigation.

(5) If the purse money has been distributed, the stewards shall order the return of the purse money to the horse owner as set forth in Section 17 of this administrative regulation.

(6) At the conclusion of testing, the remaining portion of the samples at the Authority laboratory and the split samples remaining at the detention barn facility may be retained at a proper temperature at secure facilities for a period of up to one (1) year; provided, however, if a positive laboratory report has been issued, the Authority shall use its reasonable best efforts to retain any remaining portion of the sample until legal proceedings have concluded.

Section 16. Other Prohibited Practices. In addition to other prohibitions set forth in this administrative regulation, the following prohibited practices shall be prohibited:

1. The possession or use of a drug, medication, or substance on a location under the jurisdiction of the Authority:
   (a) For which a recognized analytical method has not been developed to detect and confirm the administration or presence of such medicine, drug, or substance;
   (b) The use of which may endanger the health and welfare of the horse;
   (c) The use of which may endanger the safety of the rider.

2. The possession or use of a drug, medication, or substance at a location under the jurisdiction of the Authority that is not approved by the United States Food and Drug Administration (FDA) for use in humans or animals.

(a) The possession or use of the following blood-doping agents at a location under the jurisdiction of the Authority:

1. Erythropoietin
2. Darbepoietin
3. Epoetin alfa
4. Hemoglobin; or
5. Any substance that abnormally enhances the oxygenation of body tissue.

(b) The practice, administration, or application of a treatment, procedure, or therapy which may:
   (a) Endanger the health or welfare of a horse, or
   (b) Endanger the safety of a rider.

(a) The use of Extracorporeal Shock Wave Therapy or Focal Pulse Wave Therapy unless the following conditions are met:

1. A treated horse shall not race for a minimum of six (6) days following treatment;
2. A veterinarian licensed to practice by the Authority shall administer the treatment;
3. The Authority veterinarian shall be notified prior to the delivery of the machine on association grounds; and
4. A report shall be submitted by the veterinarian administering the treatment to the Authority veterinarian on the prescribed form within twenty-four (24) hours of treatment.

(c) The administration of an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse.

(d) Possession or use of any of the ingredients of the parathormones or the parathyroid glands.

(e) A serum total carbon dioxide (TCO2) level equal to or exceeding thirty-seven (37) millimoles per liter in a horse; provided, however, no violation shall be deemed to have occurred if the TCO2 level is found to be normal for the horse after following the quarantine procedures set forth in Section 17 of this administrative regulation.

(f) Possession or use of a blood gas machine by any person other than an authorized representative of the Authority at a location under the jurisdiction of the Authority;

(g) Possession or use of a shock wave therapy machine by anyone other than a veterinarian licensed by the Authority at a location under the jurisdiction of the Authority.

Section 17. TCO2 Testing and Procedures. (1)(a) The stewards or Authority veterinarian may order the pre-race or post-race collection of blood samples from a horse to determine the total carbon dioxide concentration in the serum or plasma. The winning horse and other horses, as directed by the stewards, may be tested in each race.

(b) Pre-race testing shall be done at the time, place, and manner directed by the Authority veterinarian. If testing is post-race, blood samples shall be taken not less than one (1) hour after racing.

(c) A sample consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO2 concentration in the serum or plasma. If the Authority laboratory determines that the TCO2 level is equal to or exceeds thirty-seven (37) millimoles per liter, the Executive Director of the Authority shall be informed of the positive finding.

(d) Split Sample testing for TCO2 may be requested by an owner or trainer in advance of the collection of such samples by the Authority veterinarian; however, the collection and testing of a split sample for TCO2 testing shall be done at a time, place, and manner directed by the Authority veterinarian.

(e) The cost of split sample testing shall be borne by the owner of the trainer.

(f) If the level of TCO2 is determined to be equal to or exceed thirty-seven (37) millimoles per liter and the licensed owner or trainer of the horse certifies in writing to the stewards within twenty-four (24) hours after the notification of the result that such level is not normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is required, the licensed veterinarian shall make guarded quarantine available for that horse for a period of time to be determined by the stewards, but in no event for more than seventy-two (72) hours.

(g) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(h) If the Authority veterinarian is satisfied that the horse's level of TCO2, as registered in the previous testing, is physiologically normal for that horse, the stewards shall permit the horse to race.

(i) The horse shall be fed and watered; however, in such case, the stewards, in their discretion, may require that the horse re-establish that its TCO2 level is physiologically normal pursuant to the quarantine procedures set forth in this section.
Section 19. Postmortem examination. (1) The Authority veterinarian may require a postmortem examination of a horse that dies or is destroyed for postmortem examination. The Authority veterinarian may submit saliva, blood, urine, and other samples and specimens collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner’s option and expense.

(2) The presence of a prohibited drug, medication, substance, or metabolism derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 19. Claimed horses. (1) Any person who claims a horse may void the claim if the horse is found to have,
(a) Class A, B, or C drugs in its system; or
(b) A TCDD level equal to or exceeding 27.0 milligrams per liter.

(2) A horse in Admisitration Prohibited. (1) On the day of the race for which a horse is entered, only a licensed veterinarian shall administer, cause to be administered, participate or attempt to participate in any manner in the administration of a medication, drug, substance, or metabolite derivative thereof.

(2) A medication, drug, or substance, or metabolite derivative thereof shall not be administered less than four (4) hours prior to post time.

(3) A person who administers, or his designated representative, may accompany a veterinarian.

Section 3. Responsibility for Prohibited Administration. (1) A licensed-trainer, assistant trainer, groom, stable watchman, or other person having the immediate care and custody of a horse governed by the provisions of this administrative regulation shall exercise a high degree of care in safeguarding the horse from tampering.

(2) A person shall be subject to disciplinary action, if he administered, or caused, or participated or attempted to participate in any manner, in the administration of a medication, drug, substance, or metabolite derivative thereof in violation of Section 1 or 2 of this administrative regulation.

(3) If the commission determines that a horse has administered a medication, drug, substance, or metabolite derivative thereof in violation of Section 1 or 2 of this administrative regulation, a licensed-trainer, assistant trainer, groom, stable watchman, or other person having the immediate care and custody of a horse governed by the provisions of this administrative regulation shall be subject to disciplinary action if he does not establish that he had:
(a) Not been negligent by failing to exercise a high degree of care in safeguarding the horse from tampering;
(b) Relied on the professional ability of a licensed veterinarian.

Section 4. Record of Administration. (1) A licensed veterinarian who administers or prescribes the treatment of a horse registered for racing with a medication, drug, substance, or metabolite derivative thereof, shall submit a daily report of the treatment to the commission veterinarian.

(2) If an unreported medication, drug, substance, or metabolite derivative thereof, has been detected by the commission chemist, the licensed veterinarian and trainer shall:
(a) Be issued a warning by the stewards, if they;
(1) Unreported medication, drug, substance, or metabolite derivative thereof, is not prohibited by the provisions of this administrative regulation; and
(2)Licensed veterinarian or trainer had not previously administered an unreported medication, drug, substance, or metabolite derivative thereof.
(b) Disciplined by the stewards, if they:
(1) Unreported medication, drug, substance, or metabolite derivative thereof, is not prohibited by the provisions of this administrative regulation; and

2. Licensed veterinarian or trainer had previously administered an unreported medication, drug, substance, or metabolite derivative thereof.

(3) If an unreported medication, drug, substance, or metabolite derivative thereof, has been detected by the commission chemist, the licensed veterinarian and trainer shall be disciplined if the unreported medication, drug, substance, or metabolite derivative thereof, is prohibited by the provisions of this administrative regulation.

(4) A daily report shall state that:
(a) Identity of the horse treated;
(b) Time of treatment; and
(c) Type, dosage, and method of administration of the medication, drug, substance, or metabolite derivative thereof, that was prescribed for the treatment.

(5) A daily report shall be submitted on “Veterinarian Report of Horses Treated to be Submitted Daily, KRC-2.”

(6) If a daily report does not accurately state the information required by subsection (5) of this section, the:
(a) Horse that was the subject of the treatment shall be sorated, and
(b) The veterinarian shall be subject to disciplinary action, if the stewards determine that the inaccuracy was due to an intent to violate the provisions of this administrative regulation.

Section 5. (1) A medication, drug, substance, or metabolite derivative thereof shall be prohibited if it is specified as:
(a) “Prohibited-Medication, Drug, Substance, or Metabolite Derivative KRC-3;” or
(b) “Uniform Classification Guidelines for Foreign-Substances”; or

(2) A type specified by Section 1 of this administrative regulation.

Section 6. Detention-Area. (1) A licensed association shall provide and maintain on association grounds a detention area.

(2) The detention area shall be a fenced enclosure sufficient in size and facilities to accommodate the housing of horses temporarily detained for the taking of sample specimens for chemical testing.

(3) The detention area shall be under the supervision and control of the commission veterinarian.

Section 7. Horses to be Tested. (1) The stewards may at any time order the taking of a blood, urine, saliva or other specimen from a horse entered to be tested.

(2) An owner or trainer may request that a specimen be:
(a) Taken from a horse he owns or trains by the commission veterinarian; and
(b) Tested by the commission chemist.

(3) The cost of testing shall be borne by the owner or trainer who requested the test.

(4) If an order or request has not been made, the commission veterinarian shall take specimens from, and the commission chemist shall test, a horse:
(a) That finished first in any race;
(b) Whose performance in a race, in the opinion of the stewards, indicates that a medication, drug, substance, or metabolite derivative thereof may have been administered in violation of Sections 1 and 2 of the administrative regulation;
(c) Randomly selected by the stewards.

Section 8. Procedure for Taking Specimens. (1) A horse from which specimens are to be drawn shall:
(1) Be taken to the detention area at the time prescribed by the commission veterinarian; and
(2) Remain there until released by the commission veterinarian.

(2) Only the owner, trainer, groom, or hotwalker of a horse to be tested shall be admitted to the detention area without permission of the commission veterinarian.

(3) Only stable equipment necessary for washing and cooling out a horse shall be permitted in the detention area.

(4) Buckets and water shall be furnished by the commission veterinarian.

(5) If a body brace is to be used, it shall;
1. Be supplied by the trainer; and
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2. Administered only with the permission and in the presence of the commission veterinarian.

(d) A licensed veterinarian shall attend a horse in the detention area only in the presence of the commission veterinarian.

(3) One (1) of the following persons shall be present and attend the taking of a specimen from a horse:

(a) The owner; or
(b) The trainer; or
(c) For a claimed horse, the trainer in whose name the horse raced; or
(d) A stable representative designated by the owner or trainer.

(4)(a) A container that had been used for specimen shall be:

1. Thoroughly cleaned in the commission's laboratory;

2. Sealed with the commission's laboratory seal.

(b) The laboratory stamp shall be broken only in the presence of one (1) of the witnesses specified by subsection (3) of this section.

(5) Samples taken from a horse, by the commission veterinarian or his assistant at the detention barn, shall be placed equally in two (2) containers and designated as the primary and secondary samples.

(a) A sample shall be sealed with tamper-proof tape and bear a portion of the multiple-part Identification tag that has identical printed numbers only. The other portion of the specimen identification tag bearing the same printed identification number shall be detached in the presence of the witness specified by subsection (3) of this section.

(b) The commission veterinarian shall:

1. Identify the horse from which the specimen was taken;

2. Document the case and day, verified by the witness; and

3. Place the detached portions of the identification tags in a sealed commission specimen identification tag envelope for delivery only to the stewards.

(c) After both portions of samples have been identified as provided by paragraph (a) of this subsection, the primary sample shall be delivered to the commission's laboratory.

(6) The specimen shall remain in the custody of the commission veterinarian at the detention area and shall be preserved in the same condition and temperature as the primary sample.

(c) The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff knows the identity of the horse from which a specimen was taken prior to the completion of all testing.

(b) The commission chemist has reported that the primary sample delivered to him does not contain a prohibited medication, drug, substance, or metabolite-derivative thereof, the secondary sample shall be properly disposed of.

(c) The commission veterinarian may permit a horse to be returned to its barn and usual surroundings for the taking of a specimen under his supervision, if he has determined that:

1. The horse has remained in the detention area for a reasonable time; and

2. It will not be possible to obtain a specimen from the horse in the detention area.

(h) If fifty (50) ml or less of urine is obtained:

1. It shall not be split,

2. It shall be considered the primary sample;

3. It shall be tested as other primary samples are tested; and

4. If the total urine collected is less than 100 ml, the secondary sample shall consist of the balance of the collected urine that exceeds fifty (50) ml.

(f) A blood sample shall be initially taken in a quantity sufficient to ensure that ample amounts are obtained for the primary and secondary samples.

1. The primary and secondary blood sample shall be equal in quantity and consist of at least twenty (20) ml; for a total of forty (40) cc.

(g) The commission chemist shall notify the commission, orally and in writing, if an initial finding establishes the presence of a medication, drug, substance, or metabolite-derivative thereof, prohibited by Sections 41 and 2 of this administrative regulation or a negative.

(h) Upon an initial finding of a medication, drug, substance, or metabolite-derivative thereof, prohibited by Sections 41 and 2 of this administrative regulation or a negative, the commission veterinarian shall immediately freeze the secondary urine sample.

4. The secondary samples shall be tested after notification of the owner, trainer or other responsible person, if requested.

1. Testing of the secondary samples shall be performed at a reference laboratory selected by representatives of the owner and trainer or from a laboratory approved by the commission.

(f) The commission shall pay the cost of preparing and shipping a sample. The cost of testing at the reference laboratory shall be assumed by the person who requested the test.

(m) The reference laboratory shall be informed by the commission veterinarian of the initial finding of the commission chemist before it conducts its test.

2. To ensure the identity of the secondary sample and that the test of the sample is performed satisfactorily, a commission representative, the owner, or trainer may be present when the secondary sample is opened, repacked and tested.

(n) It shall be concluded that there is insubstantial evidence upon which to charge a person with a violation of the provisions of this administrative regulation if:

1. The finding of the reference laboratory did not confirm the finding of the initial test performed by the commission chemist; and

2. There is no other independent proof that a medication, drug, substance, or metabolite-derivative thereof, prohibited by Sections 41 and 2 of this administrative regulation was administered to the horse that was the subject of the test.

(o) The commission veterinarian shall:

1. Safeguard a specimen in his possession;

2. Deliver a specimen only to the commission chemist after it has been sealed; and

3. Ensure that the identity of the horse from which a sample was taken is not revealed.

Section 6. Procedure for Testing. (1)(a) The commission chemist shall safeguard and test each specimen delivered to his laboratory by the commission veterinarian.

(b) A specimen shall be divided into two (2) portions.

1. The first portion shall be used for initial testing for unknown substance; and

2. The second portion shall be used for confirmation tests.

(2)(b) For each specimen, the commission chemist shall conduct:

1. Individual tests that are capable of concerning a specimen for medication, drug, substance, or metabolite-derivative thereof, prohibited by Sections 41 and 2 of this administrative regulation; and

2. Other tests necessary to detect and identify a medication, drug, substance, or metabolite-derivative thereof, that may be prohibited by Sections 41 and 2 of this administrative regulation.

(b) Pooling shall be permitted upon approval of the commission veterinarian.

(c) Upon a finding of a test negative for prohibited medication, drug, substance, or metabolite-derivative thereof, the remaining portions of the specimen may be discarded.

(b) If the finding of a test is suspicious or positive for a medication, drug, substance, or metabolite-derivative thereof, prohibited by Sections 41 and 2 of this administrative regulation, the:

1. Test shall be reconfirmed; and

2. Remaining portions of a specimen shall be preserved and protected until the stewards rule that the specimen shall be discarded.

(4)(a) The commission chemist shall submit to the stewards a written report on each specimen that has been tested.

(b) The report shall state, by specimen identification number, whether a specimen had tested negative or positive for a medication, drug, substance, or metabolite-derivative thereof, prohibited by Sections 41 and 2 of this administrative regulation.

(c) The commission chemist shall report a test finding only to the stewards or his designated representative.

(d) If the commission chemist finds a specimen suspicious for a medication, drug, substance, or metabolite-derivative thereof, prohibited by Sections 41 and 2 of this administrative regulation, he may request additional time for test analysis and confirmation.
(c) A racing association shall not distribute a purée until the stewards notify it that tests relating to a medication, drug, substance, or metabolite derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation, have:

1. Been completed;
2. Have not shown the presence of a medication, drug, substance, or metabolite derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation.

(b) The commission chemist shall make a further report to the stewards on a substance which his tests reveal are not normal in a horse.

(a) The report shall be confidential and shall not be evidence for disciplinary action.

(c) This report may be disclosed to the trainer or veterinarian by the stewards or commission veterinarian to improve his surveillance.

(d) If this report is submitted to the Equine Research Program at the University of Kentucky for pharmacological evaluation.

(e) The residue of specimen material from the test shall be preserved by the commission chemist and released to the racing commission.

Section 20. Incorporation by Reference. (a) The following material is incorporated by reference:

1. "Veterinarian Report of Horses Treated to be Submitted Daily, KRC-2 (8/07);
2. "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule (8/05);
3. "Prohibited Medication, Drug, Substance, or Metabolite Derivative KRC-3 (6/98);
6. "Specimen Identification Tag, KRC-5 (5/98); and

(b) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Authority [address].

Section 21. The requirements, enforcement, and enforcement of this emergency administrative regulation shall begin on September 7, 2005.

LAJUANA S. WILCHER, Secretary
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 15, 2005
FILED WITH LRC: August 19, 2005 at 11 a.m.


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jim Gallagher, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is designed to govern the administration of drugs and medications to thoroughbred horses. The administrative regulation establishes the drugs and medications that can be administered to a horse on the day of a race and in what amounts. The administrative regulation also designates certain actions as prohibited practices. Additionally, the administrative regulation also sets forth the testing procedures to be employed in order to determine whether prohibited substances have been administered to a horse.
(b) The necessity of this administrative regulation: This administrative regulation is critical to the racing industry in Kentucky. The importance of a comprehensive, effective, and far-reaching administrative regulation governing the use of drugs and medications in horses cannot be overstated. It is critical that this administrative regulation be clear and effective. In order to maintain the integrity of thoroughbred racing and protect the physical well-being of jockeys, it is necessary that the racing industry have strong and enforceable rules, coupled with sanctions, governing what drugs, medications or other substances can be in the body of a horse at the time it goes to the starting gate to compete in a race.

(c) How this administrative regulation conforms to the content of the administrative statutes: KRS 230.240(2) specifically authorizes the Kentucky Horse Racing Authority ("KHRA") to "promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." KRS 230.215(4) authorizes the KHRA "forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth..." KRS 230.290(3) provides the KHRA with the "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state..." KRS 230.320(1) authorizes the KHRA to "promulgate administrative regulations under which any license may be denied, suspended or revoked." Based on the foregoing, this administrative regulation and the amendment to it conforms with the content of the administrative statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The emergency amendment to 810 KAR 1:018, the drug and medication administrative regulation, will provide an effective, comprehensive, and far-reaching rule regarding the administration of drugs and medications to thoroughbred horses and will, therefore, directly assist in the effective administration of the statutes in Kentucky. The current administrative regulation, if strictly applied as written, is wholly impractical, ineffective, and unworkable. The present rule is far too restrictive and outlines even medications that are universally accepted in the racing industry. As a result of the inadequacy of the present regulation, the former Kentucky Racing Commission, in October 2002, issued an internal policy memorandum which permitted various drugs and medications to be administered to horses not less than 4 hours prior to a race. The present rule did not meet the force of this policy, which did not meet the force of this policy. The result of allowing certain drugs to be given to a horse close to post time. This emergency amendment is comprehensive and far-reaching and is the result of extensive and wide-ranging research on the part of the Kentucky Equine Drug Research Council and national organizations dedicated to putting together the best possible rule regarding race-day medications.

(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 emergency amendment will largely replace the existing administrative regulation. The present regulation prohibits a horse from carrying in its body virtually any medication, drug, substance or metabolite derivative. The current regulation is far too restrictive and would, in effect, prohibit all prohibited medications from being administered to a horse on the day of a race. The emergency amendment would allow anti-bleeder medications to be administered to a horse not less than 4 hours prior to post time. Additionally, the emergency amendment permits a horse to receive certain specified nonsteroidal anti-inflammatory drug not less than 24 hours prior to post time. The current regulation, strictly applied, prohibits the administration of such medications. This amendment further addresses other prohibited practices such as the possession or use of blood doping agents, the possession or use of a shock wave therapy machine and the possession or use of a blood gas machine. Finally, this amendment addresses testing procedures and the responsibility of trainers and veterinarians to ensure that prohibited drugs and medications are not administered to horses.

(b) The necessity of the amendment to this administrative regulation: It is critical that the present regulation be amended as soon as possible, certainly before the beginning of the next thoroughbred race meeting in Kentucky. As was stated previously, the current regulation prohibits the administration of even those drugs and medications which are universally accepted within the racing industry. The current regulation is completely impractical and unrealistic. As a result of the inadequacy of the existing regulation, the former Kentucky Racing Commission issued an internal policy
memorandum that took effect in October 2002. That internal policy was far too lenient and allowed various medications, principally nonsteroidal anti-inflammatory agents, to be administered not less than 4 hours prior to post time. This internal policy has been implemented since October 2002, even though it clearly has no legal effect or enforceability since it circumvents the existing regulation in violation of KRS 13A.130. It is clearly that the current administrative regulation be amended as soon as possible. This amendment is effective, thorough, and enforceable. It will result in placing Kentucky at the forefront of thoroughbred racing in this country in terms of regulating drugs, medications, and other substances in thoroughbred horses.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms precisely to the authorizing statutes set out above, which specifically charge the KHRA with the responsibility of promulgating regulations which prohibit the improper administration of drugs or stimulants to horses that are competing in races.

(d) How the amendment will assist in the effective administration of the statute: This amendment provides a comprehensive, far-reaching, and enforceable regulation that will enable the KHRA to monitor and test horses and prevent the improper administration of drugs and medications. The current regulation is not being enforced because it is too stringent and would virtually shut down racing if enforced.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all aspects of the thoroughbred racing industry. Owners, trainers, jockeys, exercise personnel, the betting public, and others who work in and around race tracks and other licensed facilities in Kentucky will be affected by this regulation.

(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: The most significant impact of this amendment will be a dramatic improvement in the ability of the KHRA to protect the safety and welfare of jockeys and horses. This amendment will clearly minimize the likelihood that thoroughbreds are engaging in races while improperly and illegally medicated. This amendment will enhance the ability of the KHRA to monitor and regulate the types and amounts of drugs being administered to horses.

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

(a) Initially: It is not anticipated that there will be any additional costs to the state associated with the implementation of this amendment to the regulation.

(b) On a continuing basis: No increase in cost.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: See (7) above.

(9) TIERING: Is tiering applied: No, tiering does not apply to this regulation.

STATEMENT OF EMERGENCY
810 KAR 1:026E

Nature of the emergency: The Kentucky Horse Racing Authority has filed an emergency amendment to 810 KAR 1:018, the administrative regulation that governs the use of drugs, medications, and other practices in the thoroughbred racing industry. There presently exists a very real and immediate state of emergency within that industry in Kentucky due to the inadequacy of the present drug and medication administrative regulation and the fact that the former Racing Commission attempted to enforce internal policies that clearly do not have the force of law. Horses in Kentucky are currently running with drugs and medications in their systems that could endanger the health and physical safety of the jockeys that are riding them. In order for the emergency rules regarding race day medications and other practices to have the necessary deterrent effect, it is mandatory that those rules carry with them tough and enforceable penalties in the event of violations. Without effective penalties, the rules have no potency. Under KRS 230.240(2), the Kentucky Horse Racing Authority is charged with the responsibility of ensuring that horses in Kentucky race free of the taint of illegal and illicit drugs and medications. In order to carry out this mandate, the Authority must have the power and the ability to effectively sanction violators. The present administrative regulation governing penalties in thoroughbred cases, 810 KAR 1:028, is clearly inadequate in terms of providing the Racing Authority with the power and leverage it needs in order to effectively enforce its drug and medication rules. Under the present regulatory scheme, the stewards are authorized to suspend the racing license of violators from five (5) days to five (5) years or, in lieu of the suspension, fine the violator a maximum of $5,000. The Authority may suspend or revoke a racing license from five (5) days to five (5) years or, in lieu of the suspension, fine the violator in any amount. This emergency amendment establishes the penalties for infractions of the new drug and medication administrative regulation. The new penalties are both stiffer and more specific than those presently authorized. Additionally, new violations have been added on the backgrounds of suspended and revoked persons and their associates. In order to enforce the new drug administrative regulations, the penalty administrative regulations must be amended to allow for the stiffer penalties. Since there is clearly an emergency in effect in this state regarding drugs and medications in thoroughbred horses, there is similarly an emergency in terms of the ability of the Kentucky Horse Racing Authority to effectively enforce the new administrative regulations. The reasons an ordinary administrative regulation is not sufficient: As was related in the Statement of Emergency that accompanies 810 KAR 1:018E, the emergency drug and medication administrative regulation, there presently does not exist an effective and workable set of properly-implemented administrative regulations regarding the use of drugs and medications for thoroughbreds. The danger to the jockeys who ride the horses is so real and immediate that delay - any delay - is totally unacceptable. There is no room for delay as far as a new drug and medication rule is concerned, and there is no room for delay in providing the Racing Authority with the means to carry it out. This emergency administrative regulations shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler at the time this emergency amendment is filed.

ERNIE FLETCHER, Governor
WILLIAM STREET, Chairman
ENVIROMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(Emergency Amendment)

810 KAR 1:026E. Disciplinary measures and penalties.

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(3)
EFFECTIVE: August 19, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 authorizes [grants the commission] the authority to promulgate necessary and reasonable administrative regulations [regulate conditions] under which racing shall be conducted in Kentucky. The function of this administrative regulation is to establish the disciplinary powers and duties of the stewards and the Authority [commission].

Section 1. Definitions. (1) "Associated Person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or
other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that such other person is to care for or train a horse, or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug classified as a Class A drug in the schedule.

(3) "Class B drug" means a drug classified as a Class B drug in the schedule.

(4) "Class C drug" means a drug classified as a Class C drug in the schedule.

(5) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(6) "Inactive person" means a trainer or veterinarian who has his or her license suspended or revoked for a violation of the administrative regulations pertaining to:

(a) Class A drugs;

(b) A third violation of the administrative regulations pertaining to Class B drugs;

(c) TCIO under Section 6(c) or (d) shock wave, or blood gas machines under Section 6(c).

(7) "Schedule" means the Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule. [Definition.]

"Steward" means a racing steward or racing judge.

Section 2. General Provisions. (1) An alleged violation involving a Class A drug, medication, or substance shall be adjudicated by the stewards in consultation with the Authority.

(2) A drug, medication, or substance found to be present in a prerace or post-race sample that is not classified in the schedule shall be presumed to be a Class A drug and shall be subject to Class A drug penalties, unless satisfactorily demonstrated that the drug, medication, or substance does not fall within the definition of a Class A drug.

(3) Stewards and the Authority shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this paragraph.

(4) The Authority has the authority to suspend or revoke the Authority-issued license of an owner, trainer, veterinarian, or other licensee.

(5) A licensee whose license has been suspended or revoked or a horse that has been suspended, shall be denied access to locations under the jurisdiction of the Authority during the term of the suspension or revocation.

(6) A suspension or revocation shall be calculated in calendar or Kentucky racing days at the discretion of the stewards or the Authority.

(7) A person assessed a penalty pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the Authority. If an appeal is pending, that fact shall be noted.

(8) To protect the racing public and ensure the integrity of racing in the Commonwealth, a trainer whose penalty for a Class A violation or for a Class B third offense violation under this administrative regulation has not been fully and finally adjudicated may, in the discretion of the stewards, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of such horse, and the cost shall be borne by the trainer.

(9) A veterinarian who administers, or is a party to, or facilitates the administration of, or is found to be responsible for the administration of a Class A drug, medication, or prohibited substance to a horse, in violation of the administrative regulation, or who has engaged in prohibited practices under this administrative regulation, shall be reported to the appropriate professional state licensing board.

(10) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar nor considered legally prejudicial regarding prosecution for any act which violates the criminal statutes of Kentucky.

Section 3. Prior Offenses. (1) Prior offenses occurring in Kentucky shall be considered by the stewards and by the Authority in assessing penalties. Prior offenses occurring in other racing jurisdictions may be considered by the stewards and the Authority in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender's prior record containing violations that were committed both inside and outside of Kentucky.

(2) Offenses occurring before the effective date of this administrative regulation shall not be considered.

(3) Prior offenses involving a Class C drug, medication, or substance may be considered as a prior offense, if the act that constituted the offense was committed after the effective date of this administrative regulation and within one (1) year of the offense for which the person stands charged.

(4) Prior offenses involving a Class A or B drug, medication, or substance may be considered as a prior offense, if the act that constituted the offense was committed after the effective date of this administrative regulation.

(5) Prior offenses shall not be considered for purposes of enhancing a penalty if the drug, medication, or substance that was the subject of the prior offense was of a lower class, pursuant to the schedule, than the drug, medication, or substance that is the subject of the offense for which the person stands charged.

Section 4. Penalties for Class A, B, and C Drugs, Medications, and Substances. (1) A Class A drug, medication, or substance. A person who administers, or is a party to or responsible for administering a Class A medication, drug, or substance to a horse, in violation of this administrative regulation shall be subject to the following penalties:

(a) For a first offense:

1. A fine of $5,000 to $10,000; or

2. A suspension or revocation of licensing privileges from zero to three (3) years. Section 7 of this administrative regulation shall apply to the suspension or revocation.

3. Forfeiture of purses money won.

(b) For a second offense:

1. A fine of $10,000 to $20,000; or

2. A suspension or revocation of licensing privileges from three (3) to five (5) years. Section 7 of this administrative regulation shall apply to the suspension or revocation.

3. Forfeiture of purses money won.

(c) For a third offense:

1. A fine of $20,000 to $50,000; or

2. A suspension or revocation of licensing privileges for not less than five (5) years. A revocation of licensing privileges may be permanent. Section 7 of this administrative regulation shall apply to the suspension or revocation.

3. Forfeiture of purses money won.

(d) Suspension of the owner's horse. A horse administered a Class A drug, medication, or substance, in violation of this administrative regulation, shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense - a suspension from zero to sixty (60) days;

2. For a second offense - a suspension from sixty (60) to one (1) year;

3. For a third offense - a suspension from one (1) to two (2) years.

(2) Class B drug, medication, or substance. A person who administers, or is a party to or is responsible for administering a Class B drug, medication, or substance to a horse, in violation of this administrative regulation shall be subject to the following penalties:

(a) For a first offense:

1. A fine of $500 to $1,000; or

2. A suspension of licensing privileges from zero to three (3) months; and

3. Forfeiture of purses money won.

(b) For a second offense:

1. A fine of $1,000 to $2,500; or

2. A suspension of licensing privileges from three (3) to six (6) months; and

3. Forfeiture of purses money won.

(c) For a third offense:
1. A fine of $2,500 to $5,000;
2. A suspension or revocation of licensing privileges from six (6) months to one (1) year, Section 7 of this administrative regulation shall apply to the suspension or revocation; and
3. Forfeiture of purse money won,
   (d) Suspension of the owner’s horse, A horse administered a Class B drug, medication, or substance in violation of these administrative regulations, shall be subject to a suspension from racing in Kentucky, as follows:
   1. For a first offense - no suspension;
   2. For a second offense - a suspension from zero to sixty (60) days;
   3. For a third offense - a suspension from sixty (60) to 180 days;
   (e) Class C drug, medication, or substance, A person who administers, or is a party to, or is responsible for administering a Class C drug, medication, or substance to a horse, in violation of this administrative regulation shall be subject to the following penalties:
      (a) For a first offense any or all of the following penalties shall apply:
          1. A fine of $250 to $500;
          2. A suspension of licensing privileges from zero to ten (10) days;
          3. Forfeiture of purse money won,
      (b) For a second offense each of the following penalties shall apply:
          1. A fine of $500 to $1,000;
          2. A suspension of licensing privileges from ten (10) to thirty (30) days; and
          3. Forfeiture of purse money won,
      (c) For a third offense each of the following penalties shall apply:
          1. A fine of $1,000 to $2,500;
          2. A suspension of licensing privileges from thirty (30) to sixty (60) days; and
          3. Forfeiture of purse money won,
   Section 5. TC02 penalties, A person who violates or causes the violation of 810 KAR 1:018, Section 16(6), (7), or (6) shall be subject to the following penalties:
   (a) For a first offense:
       1. A fine of $1,000 to $1,500;
       2. A suspension of licensing privileges from zero days to three (3) months; and
       3. Forfeiture of purse money won,
   (b) For a second offense:
       1. A fine of $1,500 to $3,000;
       2. A suspension of licensing privileges from three (3) months to six (6) months; and
       3. Forfeiture of purse money won,
   (c) For a third offense:
       1. A fine of $3,000 to $5,000;
       2. A suspension or revocation of licensing privileges from six (6) months to (1) year; and
       3. Forfeiture of purse money won,
   (d) Subsequent offenses:
       1. A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation; and
       2. Forfeiture of purse money won,
   (e) Suspension of the owner’s horse, A horse that registers a TC02 level equal to or in excess of thirty-seven (37) milligrams per liter of plasma shall be subject to suspension from racing in the Commonwealth of Kentucky as follows:
       1. For a first offense - the suspension;
       2. For a second offense - a suspension from fifteen (15) to sixty (60) days;
       3. For a third offense - a suspension from sixty (60) days to 180 days;
       4. For a fourth offense - a suspension from eight (8) months to one (1) year.
Section 6. Shock Wave Machine and Blood Gas Machine Penalties, A person who violates or causes a violation of 810 KAR 1:018, Section 16(6)(a), (2), (9), or (10) regarding a shock wave machine or blood gas machine shall be subject to the following penalties:
(a) For a first offense, 1. A fine of $1,000 to $5,000; and
   2. A suspension of licensing privileges from one (1) to three (3) months.
(b) For a second offense:
   1. A fine of $5,000 to $10,000; and
   2. A suspension of licensing privileges from three (3) to six (6) months.
   (c) For a third offense:
   1. A fine of $10,000 to $20,000; and
   2. A suspension or revocation of licensing privileges from six (6) months to one (1) year.
Section 7. Persons with a Suspended or Revoked License, (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person.
   (2) An associated person of an inactive person shall not:
      (a) Assume the inactive person’s responsibilities at a location under the jurisdiction of the Authority;
      (b) Complete an entry form for a race to be held in the Commonwealth of Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or
      (c) Pay or advance an entry fee for a race to be held in the Commonwealth of Kentucky on behalf of the inactive person or owner or customer for whom the inactive person has worked.
   (3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:
      (a) Be paid a salary directly or indirectly by or on behalf of the inactive person;
      (3) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;
      (a) Make a payment or give remuneration or other compensa
tion or consideration to the inactive person or associated person; or
      (d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the Authority.
   (4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or supervision of an inactive person shall:
      (a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in the Commonwealth of Kentucky;
      (b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses and deposit income from an owner or client of the inactive person;
      (c) Not use the services, directly or indirectly, of current employees of the inactive person; and
      (d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for such expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person’s license.
Section 8. Other Disciplinary Measures, (1) A person who violates 810 KAR 1:018, Section 3, regarding furosemide and diuretic bleeder medication use on raceday shall be subject to the penalty provisions for Class C drugs.
   (2) A person who violates 810 KAR 1:018, Section 5(1) for exceeding the concentration levels allowed for permitted Non-Steroidal Anti-Inflammatory Drugs ("NSAIDs") shall be subject to the penalty provisions set forth for Class C drugs.
   (3) A person who violates 810 KAR 1:018, Section 5(3) for administering more than one (1) permissible NSAID shall be subject to the penalty provisions set forth for Class A drugs.
   (4) A person who violates 810 KAR 1:018, Section 16(2) shall be subject to the penalty provisions for Class A drugs.
   (5) A person who violates 810 KAR 1:018, Section 16(3)(a)
shall be subject to the penalty provisions for Class A drugs.

Section 2. [2-3] Disciplinary Measures by Stewards. Upon [the] finding [of] a violation of these administrative regulations, or an attempted violation, if not otherwise provided for in this administrative regulation [on association grounds during the conduct of a meeting at which the stewards have been appointed to serve], the stewards may impose one (1) or more of the following penalties:

(1) Declare a horse or a licensed person ineligible to race [for racing] or disqualify a horse or a licensed person in a race;

(2) A forfeiture of all monies won on the horse, entered in a race, and any other money derived from the race;

(3) Any licensed person in violation of 810 KAR 1-025, Section 5 or in violation of any other administrative regulation contained in Chapter 810 or 811 of the Kentucky Administrative Regulations;

(4) Suspend or revoke a person's licensing privileges [the license of any person involved in a violation of an administrative regulation] for a period of time of not more (net-less) than five (5) [net greater than five (5)] years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation;

(5) Revocation of a licensee in an amount not to exceed $5,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation;

Section 10. [3-1] Disciplinary Measures by the Authority [Commission]. (1) Upon the finding [of] a violation of [these] administrative regulations [or regulations] or an attempted violation, if not otherwise provided for in this administrative regulation [on association grounds during the conduct of a race meeting in the Commonwealth], the Authority [commission] may impose one (1) or more of the following penalties:

(a) (1) Declare a horse or a licensed person ineligible to race [for racing] or disqualify a horse or a licensed person in a race [any attempted violation of these administrative regulations];

(b) Suspend or (b) Deny, suspend[,] revoke a person's licensing privileges [or declare void the license of any person involved in a violation of an administrative regulation] for a period of time of not more (net-less) than five (5) [net greater than five (5)] years as may be deemed appropriate by the Authority [commission] in keeping with the seriousness of the violation;

(c) Levy a fine against a licensee in an amount not to exceed $50,000 as may be deemed appropriate by the Authority in keeping with the seriousness of the violation;

(d) (3) Veto or exclude persons from association grounds for a [any] length of time the Authority [commission] may deem [is] necessary;

(e) (4) Upon appeal [or any] hearing de novo of a matter determined by the stewards, reverse or revise the steward's ruling in whole or in part [all respects]; except as to findings of fact by the stewards regarding matters that occurred during [or] at the running of a race and as to the extent of disqualification fixed by the stewards for a foul in a race[;]

(f) In lieu of a license suspension or revocation, the commission may set a forfeiture in any amount, which the licensee may [shall be] deemed to be the personal, benefit of any commissioner or steward.

Section 11. Material Incorporated by Reference. (1) "The Ken-ucky Horse Racing Authority Uniform Drug and Medication Classification Schedule (8/05)" is hereby incorporated by reference.

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

Section 12. The requirement, implementation, and enforcement of this emergency administrative regulation shall begin on September 7, 2005.

LAJUAN S. WILCHER, Secretary
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 15, 2005
FILED WITH LRC: August 19, 2005 at 11 a.m.
CONTACT PERSON: Jim Gallagher, Executive Director, Kentucky Horse Racing Authority, Lexington, Kentucky, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jim Gallagher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the disciplinary measures that can be imposed on persons who violate any of the regulations contained in Title 810, the portion of the Kentucky regulations pertaining to thoroughbreds. The regulation specifies those measures that can be taken by both the stewards and by the full Kentucky Horse Racing Authority ("KHRA").

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order that the KHRA have the ability and the means to enforce its regulations. If the KHRA's rules and regulations are to have any viability and effectiveness, there must be sanctions in the event of violations and the agency must have the means to enforce and apply those sanctions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the KHRA "control of horse racing... with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 438(0)(2) authorizes the KHRA to "promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." KRS 230.260 (3) provides the KHRA with "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing... shall be conducted." In view of the foregoing statutes that clearly charge the KHRA with the responsibility of policing the racing industry in Kentucky and provide full and plenary power to the Authority to regulate the industry, this administrative regulation fully conforms to the content of the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the potential penalties that can be imposed by both the stewards and the KHRA for violations of the thoroughbred regulations. This emergency amendment to the existing regulation will greatly enhance the ability of the KHRA to carry out its statutory directive to prohibit illegal and illicit drugs and medications by enabling the KHRA and the stewards to impose greater and more severe sanctions than they currently are able to do. This emergency amendment will unquestionably improve the ability of the KHRA to prohibit the presence of impermissible drugs and medications in thoroughbreds.

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

(a) How the amendment will change the existing regulation: As was stated, the current regulation allows the stewards to suspend a license from 5 days to 5 years or, in lieu of suspension, to fine the violator up to $5,000. The KHRA is authorized to suspend or
revoke for the same length of time or to fine the licensee in any amount in lieu thereof. This amendment will permit the stewards to fine up to $5,000 and suspend a licensee under certain circumstances. The KHRA will be permitted to fine up to $50,000 and to suspend or revoke a license under certain circumstances. Additionally, this amendment specifically sets out the penalties for many of the violations of 810 KAR 1:018, the drug and medication regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the KHRA to have the ability to effectively enforce its drug and medication regulations. Penalties for violations of the drug regulation need be specified and toughened, and in order for that to be accomplished this regulation must be amended.

(c) How the amendment conforms to the content of the authorizing statutes: As explained in (1)(c) above, this amendment will enable the KHRA to more effectively carry out its statutory directive to police the racing industry and prohibit horses from carrying illegal or unauthorized drugs or medications in their bodies while racing. The KHRA is given plenary power to regulate the racing industry and is charged with maintaining the integrity of that industry. Without the authority to sanction violators and impose effective penalties, the KHRA would have no leverage to deter and punish violators; therefore, this amendment clearly conforms to the content of the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will enable the KHRA to punish violators of its drug and medication regulations by imposing tough and effective penalties up to and including permanent license revocation. By having that authority, KHRA will clearly be able to more effectively administer the statutes which charge it with the responsibility of policing the racing industry and maintaining its integrity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all participants in the racing industry. All licensed personnel are subject to the penalty provisions contained in this regulation.

(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: The amendment to the regulation will mean that all persons licensed by the KHRA will be subject to stricter penalties for violations of 810 KAR 1:018 and, potentially, for other violations of the thoroughbred regulations. As was stated, the existing regulation allows suspensions and revocations or fines in lieu thereof. The amended regulation will allow the stewards and the KHRA to suspend, revoke and fine.

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

(a) Initially: It is not anticipated that there will be any additional costs associated with the implementation of this amendment to the regulation.

(b) On a continuing basis: No increase in cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: See (5) above.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: See (7) above.

(9) TIERING: Is tiering applied: No, tiering does not apply to this regulation.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1)

201 KAR 20:161. Investigation and disposition of complaints.

(4) Complainants shall be filed away if there is a determination that there is insufficient evidence of a violation or that a violation has not occurred;

(5) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or the public. If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

Section 2. Disposition of Complaints. (1) Disposition of complaints shall be as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section; or

(b) An agreement order may be issued pursuant to subsection (4) of this section; or

(c) A consent decree may be entered pursuant to subsection (5) of this section.

(3) Administrative hearings.

(a) Hearings shall be held pursuant to KRS 314.091 KRS

(b) Notice of the hearing and charges shall be mailed to the address of the licensee or applicant on file with the board pursuant to KRS 314.102 (last known address of the licensee or applicant. Service shall be deemed complete upon mailing whether or not the notice is claimed.

(c) Notice of the hearing and charges shall be signed by the executive director or his designee.

(4) Agreed order

(a) The board may enter into an agreement with an applicant or licensee for revocation, voluntary surrender, suspension, probation, reinstatement, limitation of license or reprimand, and to impose a civil penalty. The terms of the agreement may include other conditions or requirements to be met by applicant or licensee, including such as those listed in Section 4 of this administrative regulation.

(b) The agreed order may contain terms which insures protection of public health and safety, or which serve to educate or rehabilitate the applicant or licensee.

(c) The agreed order when approved by the board shall terminate the investigation of a specific complaint.

(5) Consent decree.

(a) If a licensee or applicant agrees to waive its right to a hearing and there is no evidence of intentional violation of the mandatory licensing provisions of KRS Chapter 314, the board shall issue a consent decree in accordance with the provisions of KRS 314.091 to impose a civil penalty against a licensee or applicant who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit or a current, active license issued by the board prior to filing an application for licensure.

2. Practiced as an advanced registered nurse practitioner in the Commonwealth of Kentucky without current, active registration issued by the board prior to filing an application for registration.

3. Practiced as an advanced registered nurse practitioner after expiration of the current certification granted by the appropriate national organization or agency.

4. Obtained a license or work permit on the basis of a check for an application fee which was returned unpaid by the bank.

5. Qualified for a consent decree to cure noncompliance with continuing education requirements, as set forth in 201 KAR 20:215, Section 3.

6. Executed an affidavit of reasonable cause concerning the AIDS education requirement and obtained the required education after the expiration of the six (6) months.

(b) The use of a consent decree shall be restricted to only those applicants or licensees described above and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license or registration may be issued by board staff after the applicant or licensee meets all requirements for licensure or registration and after payment of the civil penalty by the applicant or licensee.

(d) Upon ratification by the board of the consent decree the investigation of the specific complaint shall be terminated.
Section 3. The executive director or his designee shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

Section 4. The restrictions or conditions imposed by the board on a limited temporary work permit or limited license may include [but are not limited to] the following:

(1) Prohibiting the performance of specific nursing acts including [such as] access to, responsibility for, or the administration of controlled substances; administration of any medication; supervisory functions; or any act which the licensee or applicant cannot safely perform.

(2) Requiring the applicant or licensee have continuous, direct, on-site supervision by a registered nurse, physician, or dentist.

(3) Specifying the applicant’s or licensee’s practice setting.

(4) Specifying the types of patients to whom the applicant or licensee may give nursing care.

(5) Requiring the applicant or licensee to notify the board in writing of any change in name, address, or employment.

(6) Requiring the employer to submit to the board written reports of performance or compliance with the requirements set by the board.

(7) Requiring the applicant or licensee to submit to the board evidence of physical or mental health evaluations, counseling, therapy or drug screens.

(8) Meeting with representatives of the board.

(9) Issuing the license or temporary work permit for a specified period of time.

Section 5. A limited temporary work permit or limited license may be issued to:

(1) An applicant or licensee who has been subjected to disciplinary action by the board pursuant to KRS 314.091; or

(2) An applicant or licensee who holds a license with restrictions or conditions in another jurisdiction as a result of disciplinary action and has had action by the board pursuant to KRS 314.091.

JIMMY T. ISENGER, President
APPROVED BY AGENCY: June 17, 2005
FILED WITH LRC: July 12, 2005 at 3 p.m.
CONTACT PERSON. Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3305, fax (502) 695-3938, email nathan.goldman@ky.gov

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARFS, September 13, 2005)

301 KAR 1:50. Waters open to commercial fishing.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations establishing the procedures for taking fish [and creel] and the areas from where fish [and creel] may be taken. This administrative regulation establishes the areas where commercial fishing is permitted.

Section 1. Commercial Fishing Waters. (1) The following streams and rivers shall be open to commercial fishing:

(a) Big Sandy River from its junction with the Ohio River upstream to the junction of the Levisa and Tug Forks;

(b) Levisa Fork from its junction with the Big Sandy River upstream to 200 yards below the mouth of Paint Creek in Johnson County;

(c) Cumberland River from its junction with the Ohio River upstream to the Highway 62 bridge;

(d) Eagle Creek from its junction with the Kentucky River upstream to the Highway 22 bridge in Grant County;

(e) Green River from its junction with the Ohio River upstream to 200 yards below Lock and Dam 6;

(f) Highland Creek from its junction with the Ohio River upstream to the Rock Ford Bridge in Union County;

(g) Kentucky River from its junction with the Ohio River upstream to the junction of the North and Middle Forks of Kentucky River;

(h) North Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Walker’s Creek;

(i) South Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Cow Creek;

(j) Licking River from its junction with the Ohio River upstream to a point directly adjacent to Highway 111 on the Bath and Fleming Counties line;

(k) Mississippi River from the mouth of the Ohio River downstream to the Tennessee line;

(l) Ohio River from its junction with the Mississippi River upstream to the West Virginia state line except those segments of the river that extend below the following locks and dams where [wherein] slat baskets are the only piece of commercial gear allowed except for the first 200 yards below the dam as prescribed by KRS 150.445:

1. Lock and Dam 53 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion.

2. Lock and Dam 52 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion.

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

4. J.T. Myers [Uniontown] Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike.

5. Newburn [J.T. Meyers] Dam downstream to a line perpendicular to the end of the outer lock wall.

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

7. McAlpine Dam downstream to the K&I railroad bridge.

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

9. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall.

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

11. Pond River from its junction with the Green River upstream to the Highway 62 bridge;

12. Panther Creek from its junction with the Green River upstream to the head of the creek;

13. Rough River from its junction with the Green River upstream to the Highway 69 bridge at Dunlavy, Kentucky;

14. Tennessee River from its junction with the Ohio River upstream to River Mile 17.8:

(a) Tradewater River from its junction with the Ohio River upstream to the Highway 385 bridge; and

(b) Salt River from its junction with the Ohio River upstream to the northern boundary of Ft. Knox.

15. Lakes. The following lakes are open to commercial fishing, but not above the first shoal or riffle upstream from the impounded or standing pool of the lake in any main or tributary stream except as noted below:

(a) Barkley;

(b) Cumberland Lake is closed above the confluence of Koger Creek on the Big South Fork Tributary;

(c) Harrington;

(d) Kentucky;

(e) Nolin;
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(f) Rough River;
(g) Overflow lakes directly connected to the Mississippi and Ohio Rivers;
(h) Dewey Lake is open uplake to Buffalo Bridge; and
(i) Barren Lake.

W. JAMES HOST, Secretary
DR. JONATHAN GASSETT, Commissioner
APPROVED BY AGENCY: July 12, 2005
FILED WITH AGENCY: July 12, 2005 at 2 p.m.
CONTACT PERSON: Cara Jarrell, Attorney Kentucky Commerce Cabinet, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4270 ext. 206, fax (502) 564-1079.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at AARRS, September 13, 2005)

301 KAR 1:410. Taking of fish by other than traditional fishing methods.

RELATES TO: KRS 150.010, [150-026], 150.025(1), 150.120, 150.170, 150.175, 150.235, 150.360, 150.370, 150.440, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS [150-026], 150.025(1), 150.120, 150.170, 150.235, 150.360, 150.370, 150.440, 150.445, 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish methods of taking fish. This administrative regulation establishes the procedures for taking sport and commercial fish populations by other than traditional fishing methods such as: snagging; underwater spearing, and "scuba diving"; sport fishing trot lines, jugging and setlines; the taking of rough fish from backwaters; gigging, grabbing or snaggling, and bow fishing.

Section 1. Definitions. (1) "Bow and arrow" means a:
(a) Longbow;
(b) Compound bow; or
(c) Crossbow.

(2) "Cull" means to replace a fish in your daily creel limit with another fish of the same species.

(3) "Jugging" is defined in KRS 150.010(15).

(4) "Setline" is defined in KRS 150.010(34).

(5) "Snagging" is defined in KRS 150.010(35).

(6) "Sports Fishing Trotlines" is defined in KRS 150.010(36).

Section 2. Skin and Scuba Diving and Underwater Spear Fishing. (1) Skin or scuba diving is prohibited in all lakes owned by the Department of Fish and Wildlife Resources, except as stated in subsections (2) and (3) of this administrative regulation.

(2) Skin or scuba diving may be permitted in salvage operations upon receipt of written permission by the diver from the Division of Law Enforcement or the local wildlife and boating officer assigned to the specific body of water in which the diving is to take place.

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

(4) Underwater spearing of fish with hand held spear or mechanically-propelled spear is legal throughout the year in lakes 1,000 acres in size or larger as measured at normal or summer pool level.

(a) A participant in this type of sport shall [must] be submerged in the water in which spearing takes place.

(b) Only rough fish shall be taken and an appropriate fishing license is required.

(c) The daily limit is fifteen (15) rough fish of which not more than five (5) shall be catfish (aggregate).

Section 3. Sport Fishing Trotlines, Jugging, and Setlines. (1) Tagging and Checking.

(a) Each sport fishing trotline, jug line or setline shall be permanently labeled or tagged with the name and address of the person using it.

(b) All sport fishing trotlines, jug lines, and setlines shall be bailed, checked and all fish removed at least once every twenty-four (24) hours.

2. The fisherman shall remove these devices from the water, from the bank, or from tree limbs when he or she has finished fishing.

3. Trotlines, setlines, or jug lines that are not properly labeled, remain unchecked, or unbailed for over twenty-four (24) hours may be confiscated.

(2) Fishing requirements.

(a) A [No] sport fisherman shall not use more than two (2) sport fishing trotlines, twenty-five (25) setlines, or fifty (50) jug lines per boat.

(b) Sport fishing trotlines shall be set at least three (3) feet below the water's surface and contain no more than fifty (50) single or multibarbed hooks placed no closer together than eighteen (18) inches.

(c) A [No] jug line or setline shall not have more than one (1) single or multibarbed hook.

(d) An appropriate fishing license is required.

(3) Closed waters. A [No] sport fishing trotline, jugs, or setlines shall not be used in the following waters:

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

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

(c) In any lake less than 500 surface acres owned or managed by the department, except those specifically listed in subsection (5)(e) of this section.

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

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

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

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

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

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

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

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

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

(e) A [No] sport fishing trotline, jugs, or setlines shall not be permitted in lakes under 500 surface acres owned or managed by the department, except the following:


2. Pearl Wildlife Management Area Lakes, Ballard County.


Section 4. Rough Fish from Backwaters. (1) The Commissioner of the Department of Fish and Wildlife Resources may designate all wildlife and boating officers and other employees of the Department of Fish and Wildlife Resources to establish and supervise areas for the taking of all types of rough fish as described in 301 KAR 1:060 from the backwaters, or overflow areas of streams, rivers and reservoirs as long as the backwater, or overflow area is connected with the stream or reservoir. When the backwater is no longer connected with the stream or reservoir the landowner may, under the supervision of the wildlife and boating officer, direct the taking of rough fish in accordance with this administrative regulation. The wildlife and boating officer or other designated officials are authorized to determine the exact dates and time when the taking of these rough fish shall commence and cease.

(2) Fish may be taken in the above-described areas by any method except by the use of poison, electrical devices or firearms. If nets and seines are used, they [must] be appropriately tagged and the user [must] have an appropriate commercial

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fishing licence.

(3) A [he] wildlife and boating officer or designated official shall not permit the taking of any fish from any slough, or backwater, or overflow area without first having the permission of the landowner on whose land the water has overflowed.

(4) All persons engaged in this type of fishing shall have a fishing licence.

Section 5. Gigging, Grabbing or Snagging, Ticking, and Noodling. (1) Fish may be taken by snagging using a single hook or one treble hook except as provided in subsection (2) of this section.

(2) In the Green River and its tributaries and the Rolling Fork River and its tributaries, five (5) hooks, either single or treble hooks, may be used.

(3) Methods of gigging and snagging. A person may gig or snag from the stream or lake banks, but shall not snag or gig from a boat or platform, except that gigging is permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.

(4) Seasons. Gigging and snagging are permitted February 1 through May 10 except as provided in subsection (8) of this section. Persons may gig rough fish through the ice if the surface is from five to ten inches thick enough to stand on and the gigger shall gig while supported by the ice.

(5) Creel limits. (a) The statewide daily creel limit for rough fish taken by gigging and snagging in areas open, except in the Tennessee River below Kentucky Dam and in the Cumberland River below Barkley Dam as provided in subsections (7) (a) and (b) of this section, is unlimited with the exception that only two (2) paddlefish (no cul) may be taken daily statewide. Harvest of sport fish by gigging and snagging is prohibited statewide except as provided for in subsection (8) of this section.

(b) Daily creel limits in the Tennessee River below Kentucky Dam open to snagging and in the Cumberland River below Barkley Dam open to both gigging and snagging shall be eight (8) fish, of which no more than eight (8) may be paddlefish. Harvest of sport fish is permitted by snagging only in the Tennessee River as provided by subsection (8) of this section.

(6) Areas where gigging and snagging are permitted. Gigging or snagging for rough fish is permitted night and day in lakes and streams, except where specifically prohibited in subsections (3), (4), (7), and (8) of this section.

(7) Gigging and snagging is specifically prohibited in the following lakes, streams and their tributaries, except as provided in subsection (8) of this section.

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, and in the Cumberland River in the area below Barkley Dam downstream to US 62 bridge.

(b) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathto County line in Perry County.

(c) The Rough River, below Rough River Lake Dam downstream to Highway 54 Bridge in Breckinridge and Grayson Counties.

(d) Cave Run Lake.

(e) Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line shall be open to gigging and snagging, in season, except that portion of each tributary which is within one-half (1/2) mile of its junction with the Cumberland River.

(f) Within 200 yards of any dam on any stream.

(g) Gigging and snagging are not permitted in streams stocked with trout. These include statewide streams, national forest streams, seasonal catch and release trout streams and the Fort Campbell and Fort Knox military reservations as defined annually in the Kentucky Sport Fish and Boating Guide incorporated by reference in this administrative regulation.

(8) Snagging shall be permitted in the Tennessee River below Kentucky Dam.

(a) Season and area. Snagging is permitted in the Tennessee River between the Kentucky Lake dam and the new US 62 Bridge twenty-four (24) hours per day from January 1 through May 31.

2. From June 1 through December 31, snagging is only permitted from sunset to sunrise (local time) between the Kentucky Lake dam and the US 62 Bridge.


4. Snagging is permitted year round in the Tennessee River from the I-24 Bridge to its confluence with the Ohio River.

5. Snagging is not permitted under the US 62 bridge, the P&L Railroad bridge, or from the fishing piers located below the US 62 Bridge.

(b) Equipment.

1. A snagging rod shall not exceed a length of seven and one-half (7 1/2) feet including the handle.

2. The rod shall be equipped with line, guides, and a reel.

3. No more than one (1) single or treble hook may be attached to the line.

(c) Creel limit.

1. All fish snagged shall be kept (no cul), except for shad or heming.

2. The daily creel limit shall be an aggregate of eight (8) fish of which no more than eight (8) fish can be paddlefish and;

3. The daily creel limit shall not exceed the daily creel limit for any sport fish in which the creel limit is under eight (8) or for any sport fish species whose creel limit is over eight (8).

4. Snagging must cease once a daily limit for any sport fish is obtained.

(9) All game fish caught by gigging or snagging, except those taken as permitted in subsection (8)(c) of this section, in the Tennessee River below Kentucky Dam shall be returned to the water immediately, regardless of condition.

(10) (a) Ticking and noodling (hand grabbing) season for rough fish shall be June 1 to August 31 during daylight hours.

(b) Ticking and noodling shall be permitted in all waters.

(c) The daily creel limit for ticking and noodling shall be fifteen (15) fish of which not more than five (5) shall be catfish (aggregate).

[411] Kentucky Sport Fish and Boating Guide is incorporated by reference.

Section 6. Bow Fishing. (1) A person shall not take with a bow and arrow.

(a) Sport fish, as listed in 201 KAR 1:060, Section 1.

(b) Fish from the waters listed in subsection (7) of [the] Section 5; except in the Cumberland River below Barkley Dam where bow fishing is permitted beginning 200 yards below the dam.

(c) More than five (5) catfish (aggregate) and two (2) paddlefish daily.

Section 7. Incorporation by Reference. (1) The annual Kentucky Sport Fish and Boating Guide is incorporated by reference.

(2) This material may be [by] inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

W. JAMES HOST, Secretary
DR. JONATHAN GASSETT, Commissioner
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 12, 2005 at 2 p.m.
CONTACT PERSON: Cara Jarrell, Attorney, Kentucky Commerce Cabinet, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4270, ext. 206, fax (502) 564-1079.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky State Police
(As Amended at ARRS, September 13, 2005)


RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18

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STATUTORY AUTHORITY: KRS 237.140
NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired Kentucky elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. [U.S.C.A.] 926C and requires [authorized] the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirement and procedures for certification.

Section 1. Definitions. (1) "Applicant" means an honorably retired peace officer who has applied to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.
(2) "Honorably retired" means a Kentucky elected or appointed peace officer who:
(a) Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;
(b) Before retirement, was authorized by law to engage in or supervise as the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
(c) Before retirement, was regularly employed as a law enforcement officer for an aggregate of fifteen (15) years or more; or
2. Retired from service with an agency, after completing any applicable probationary period of service, due to a service-connected disability, as determined by the agency;
(d) During the most recent twelve (12) month period, has met, at the expense of the retired peace officer, Kentucky's standards for training and qualifications for active law enforcement officers to carry firearms, as set out in KRS 15.383;
(e) Has not received any ov畫e, or for alcohol or another intoxicating or hallucinatory drug or substance; and
(f) Is not prohibited by Federal law from receiving a firearm.
(3) "Peace Officer" is defined by KRS 448.010(24) and KRS 61.385. [Peace officer is defined by KRS 448.010(24) and 61.385.]
(4) "Honorably retired" means a Kentucky elected or appointed peace officer who:
(a) Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability; and
(b) Before retirement, was authorized by law to engage in or supervise as the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest; and
(c) Before retirement, was regularly employed as a law enforcement officer for an aggregate of fifteen (15) years or more; or
(d) Retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency.
(e) Has a nonforfeitable right to benefit under the retirement plan of the agency;
(f) During the most recent twelve (12) month period, has met, at the expense of the retired peace officer, Kentucky's standards for training and qualifications for active law enforcement officers to carry firearms;
(g) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
(h) is not prohibited by federal law from receiving a firearm.
(5) "Applicant" means an honorably retired peace officer who has applied to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C.

Section 2. Application. An applicant shall apply [may make application to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C. By completing the "Commonwealth of Kentucky Carry Concealed Deadly Weapons - LEOSA Application for License" and submitting it to the Kentucky State Police through the Sheriff's Department of the county in which the applicant resides. A fee shall be required for the application.

Section 3. Accompanying Documents. The following documents shall accompany an application:
1. Peace Officer Range Qualification Certification - LEOSA (KSP Form Number 123);
2. Certification of Law Enforcement Retirement - LEOSA (KSP Form Number 124); and
3. A notarized statement that the applicant is not prohibited by state or federal law from possessing a firearm, as required by KRS 237.140(2)(c) [Any other document, photograph, or information deemed necessary by the Kentucky State Police to enable it to adequately evaluate the eligibility of the applicant for a certification to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C].

Section 4. Perform Live-firing Exercises. An applicant shall annually qualify for certification by performing a live-firing exercise in which the applicant is required to:
1. From a safe position, (and)
2. Perform without receiving any assistance in holding, aiming, or firing from the instructor or any other person, and
3. Meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).

Section 5. Supervision of Live-firing Exercises. The live-firing exercise shall be supervised as required by KRS 237.140(4)(b).

Section 6. Live-Firing Exercise Procedures and Grading. (1) If the live-firing exercise is conducted at a facility or range that requires a training instructor or range officer to clear or directly supervise and assist in the cleaning of all firearm jams or malfunctions or clearing of all firearm jams or malfunctions by the firearms instructor or range officer in accordance with that policy shall not constitute prohibited assistance to an applicant for the purposes of Section 4(2). (2) An applicant shall provide a safe, functional handgun and factory-loaded ammunition.
(3) Prior to conducting range firing, the firearms instructor shall:
(a) Inspect each applicant's firearm; and
(b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.
(4) A passing grade shall not be given on range work to an applicant who:
(a) Does not follow the orders of the firearms instructor; or
(b) Fails to hit the silhouette portion of a target with a majority of the Twenty (20) rounds without assistance in holding, aiming, or firing the handgun from the instructor or another person.
(5) If the applicant successfully completes the live-firing exercise, within five (5) working days after the completion of the live-firing exercise, the firearms instructor shall mail or deliver the completed "Peace Officer Range Qualification Certification - LEOSA" (KSP Form Number 123) showing the applicant's successful completion of the live-firing exercise to the Kentucky State Police, Criminal Identification & Records Branch, CCDW Section, 1250 Louisville Road, Frankfort, Kentucky 40601.

Section 7. Issuance and Expiration of License. Upon receipt of the documentation required by Sections 3 and 6 of this administrative regulation, the Kentucky State Police shall issue a license confirming that the applicant is licensed to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C. A license shall expire on the date listed on the identification card described in Section 8 of this administrative regulation. Any license holder wishing to renew their license shall [must] apply and be approved in the manner described in this administrative regulation for first time applicants.
Section 8. Identification. If an applicant successfully meets the criteria established by this administrative regulation to carry a concealed deadly weapon, the Kentucky State Police shall provide photographic identification confirming that the applicant is licensed to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926c.

(1) The front of the photographic identification card shall include the following information:
   (a) Name of license holder; [ ]
   (b) Address of license holder; [ ]
   (c) Date of Birth of license holder; [ ]
   (d) Law enforcement agency license holder retired from; [ ]
   (e) Expiration date of license; [ ]
   (f) LEOSA license identification card number.

(2) The back of the photographic identification card shall include the following statement: The Commonwealth of Kentucky hereby certifies that the license holder identified on the front of this card is a qualified retired law enforcement officer as defined in the Law Enforcement Officers Safety Act of 2004 (Publ. 108-277) and has, within one (1) year prior to the expiration date shown on the front of this card, been tested or otherwise found by the Commonwealth of Kentucky to meet the standards established by the commonwealth for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Commonwealth of Kentucky: Carry Concealed Deadly Weapon—LEOSA, Application for License", July 2005
   (b) "Peace Officer Range Qualification Certification—LEOSA (KSP Form Number 123)", July 2005 and
   (c) "Certification of Law Enforcement Retirement—LEOSA (KSP Form Number 124)", July 2005

   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification & Records Branch, Kentucky State Police, 1220 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification & Records Branch is (502) 227-6700. [The following documents are incorporated by reference:
   (a) "Commonwealth of Kentucky: Carry Concealed Deadly Weapon—LEOSA Application for License",
   (b) "Peace Officer Range Qualification Certification—LEOSA (KSP Form Number 123)",
   (c) "Certification of Law Enforcement Retirement—LEOSA (KSP Form Number 124)."

   (3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification & Records Branch, Kentucky State Police, 1220 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

MARK L. MILLER, Commissioner
LT. GOVERNOR STEVE PENCE, Secretary
APPROVED BY AGENCY: July 14, 2005
FILED WITH LRC: July 15, 2005 at 11 a.m.
CONTACT PERSON: Brennan Combs, Justice Cabinet, Department of Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6300, fax (502) 573-1636.

EDUCATION CABINET
Board of Education
Department of Education
(As Amended at EAAS, September 7, 2005)
703 KAR 5:001. Assessment and accountability definitions.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.6457, 20 U.S.C. 6301 et seq.
STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system to create and implement a statewide assessment and accountability program. This administrative regulation establishes definitions for Kentucky's Assessment and Accountability Program.

Section 1. Definitions. (1) "A1 school" means a school under administrative control of a principal or head teacher and eligible to establish a school-based decision-making council. An A1 school is not a program operated by, or as a part of, another school.
   (2) "A2 program" means a district-operated, totally vocational-technical program, where the membership is counted in other schools.
   (3) "A3 program" means a district-operated, totally special education program.
   (4) "A4 program" means a district-operated, totally preschool program (e.g., Headstart, Kentucky Education Reform Act (KERA) Preschool, or Parent And Child Education (PACE)).
   (5) "A5 program" means an alternative program which is a district-operated and district-controlled facility with no defined attendance boundaries that is designed to provide services to at-risk populations with unique needs. Its population composition and characteristics change frequently and are controlled by the local school district student assignment practices and policies (i.e., the local district personnel have input with regard to the identification of students receiving services provided by the A5 school as opposed to unconditionally accepting court ordered placements). Students enrolled in A5 program typically include:
   (a) Actual dropouts returning to an alternate educational environment;
   (b) Potential or probable dropouts;
   (c) Drug abusers;
   (d) Physically abused students;
   (e) Discipline problem students;
   (f) Nontraditional students (e.g., students who have to work during the school day);
   (g) Students needing treatment (e.g., emotional/psychological).
   (6) "A6 program" means a district-operated instructional program in a nondistrict-operated institution or school.
   (7) "A2-A6 program" means a program which is classified as A2, A3, A4, A5, or A6.
   (8) "Academic index" means the summary statistic or index which describes school success on the academic goals one (1), two (2), five (5), and six (6) set forth in KRS 158.6451(1)(b).
   (9) "Accountability index" means the statistic defined in KRS 158.6457(1).
   (10) " Accountability level" means elementary (grades end of primary, four (4), and five (5)), middle (grades six (6), seven (7), and eight (8)), or high school (grades nine (9), ten (10), eleven (11), and twelve (12)).
   (11) "Adequate yearly progress in both reading and mathematics" means required performance of each school or district in obtaining:
   (a) Annual measurable objectives in reading and mathematics in the total school or district and each subprocess of sufficient size identified in 20 U.S.C. 6301 et seq.;
   (b) A school classification of any category of Progressing or meets goal in the CATS biennial or midyear classification, which occurred more recently, [year accountability index] at the elementary and middle school levels; or for a school in the assistance category which demonstrates growth in the accountability index at or above the state average for the specific grade-level configuration (that is, eighty (80) or higher, equal to or greater than the corresponding overall state or greater when compared to the accountability index from the year before) [ ];
   (c) A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as follows:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>GRADUATION RATE GOAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>71.00</td>
</tr>
<tr>
<td>2003</td>
<td>73.25</td>
</tr>
</tbody>
</table>

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1. Introduction

The purpose of this study is to examine the relationship between student achievement and school resources. The study is based on data collected from 100 schools in the United States.

2. Literature Review

Previous research has shown that school resources such as teacher quality and school funding are positively related to student achievement. However, the effects of school resources on student achievement may vary depending on the context.

3. Methodology

The study employed a mixed-methods approach, combining qualitative and quantitative data. Data were collected through surveys, interviews, and state education reports.

4. Results

The results show that schools with higher levels of teacher experience and higher per-pupil expenditures tend to have higher student achievement.

5. Discussion

The findings suggest that policymakers should focus on increasing teacher quality and funding to improve student achievement. However, the effectiveness of school resources may depend on factors such as school culture and community support.

6. Conclusion

In conclusion, school resources are important factors in student achievement. However, the relationship between school resources and student achievement is complex and may require a multi-faceted approach to improve educational outcomes.

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Section 8.

(33) "No child left behind improvement school or district" means a school or district that fails to make adequate yearly progress for two (2) consecutive years in the same content area, reading or mathematics.

(34) "Nonacademic Index" means the statistic which describes school success on the nonacademic goals set forth in KRS 156.020(1)(c), (d), and (f).

(35) "Participation in state-required assessments" means making a good faith effort by completing four multiple-choice items or responding to at least one constructed-response item in the reading and mathematics assessments combined for the appropriate grade level.

(36) "Participation rate" means the percent of students who participated in the state-required assessments.

(37) "Progressing" means the school's growth accountability index falls below its goal point and meets or exceeds its assistance point.

(38) "Reward share" means the unit of money as appropriated by the General Assembly to be distributed to schools, and is determined by the total amount of the money available for rewards in a biennium and the total number of shares to be awarded.

(39) "Safe harbor" means for a school or district that has not met the reading or mathematics annual measurable objective, that the school or district is considered to have met the objective in reading or mathematics if the school or district reduces its percent of total students or subpopulation(s) (whichever group(s) did not meet the reading or mathematics annual measurable objective), scoring below proficient by ten (10) percent, and students in the same population or subpopulation(s) demonstrate improvement or obtain a 100 or higher on the prior year academic index.

(40) "Sample of schools" means a representation of schools, not to exceed five (5) percent, of those with an accountability index above the assistance line.

(41) "Scholastic audit" means a comprehensive review of a school's learning environment, efficiency, and academic performance to determine the level of continuous improvement necessary to continuously improve student academic performance.

(42) "School classification" means the status of a school or school district, including meets goal, progressing, or in need of assistance based on measures of growth as defined in 703 KAR 5:020.

(43) "School portfolio" means a collection of documents pertinent to a school that is used to create a profile of the strengths and limitations of the school's instructional and organizational effectiveness, including:

(a) The comprehensive school improvement plan;
(b) State assessment results;
(c) Federal accountability results;
(d) Student achievement data;
(e) Portfolio with analysis data;
(f) School survey data;
(g) The school report card;
(h) District technology inventory;
(i) School handbook and master schedule;
(j) School-based decision-making policies and meeting minutes;
(k) Teacher lesson plans;
(l) District evaluation plan;
(m) Curriculum alignment documents;
(n) Examples of student work; and
(o) A listing of professional development activities.

(44) "School recognition points" means accountability index scores of fifty-five (55), sixty-six (66), seventy-seven (77), eighty-eight (88), and one hundred (100) on the accountability index scale used to recognize school standing.

(45) "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after any service area boundary changes or other local board of education policy changes affecting school population served.

(46) "Standard error of measurement" means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed.

(47) "Standards and Indicators for school improvement" means the evaluation tool used in the scholastic audit process to determine the appropriateness of the school's classification and to make recommendations to improve teaching and learning for inclusion in the existing comprehensive school and district improvement plans.

(48) "Standing of a school" means the actual performance of a school as measured by the accountability index.

(49) "State goal" means 100 on the accountability index scale which all schools are expected to meet by the target biennium.

(50) "Student achievement levels" means categories of student learning in each of the content areas, including nonperformance, medium novice, high novice, low apprentice, medium apprentice, high apprentice, proficient, or distinguished.

(51) "Student with limited English proficiency" means an individual who is an English language learner who has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny the individual opportunity to meet the state's proficient level of achievement on state assessments and to successfully achieve in classrooms where the language of instruction is English or to participate fully in society. A "student with limited English proficiency" also means a student who is age three (3) to twenty-one (21), is enrolled or preparing to enroll in an elementary school or secondary school and:

(a) Was not born in the United States or, whose native language is a language other than English;
(b) Comes from an environment in which a language other than English has had a significant impact on the individual's level of English language proficiency;
(c) Is a Native American, Alaska Native, or native resident of the outlying areas who comes from an environment in which a language other than English has had a significant impact on the student's level of English language proficiency; or
(d) Is migratory, whose native language is a language other than English, and comes from an environment in which a language other than English is dominant.

(52) "Sufficient size for calculating participation rates" means that a school or district has at least ten (10) students in a subpopulation in each grade in which NCLB assessments are administered and at least sixty (60) students in the subpopulation in these grades combined.

(53) "Sufficient size for making comparisons to annual measurable objectives" means that:

(a) A school or district has at least ten (10) students in a subpopulation in each grade in which NCLB assessments are administered; and
(b) At least sixty (60) students in the subpopulation in these grades combined or the subpopulation constitutes at least fifteen (15) percent of the students in these grades combined.

(54) "Target biennium" means the biennium by the end of which all schools are expected to reach the state goal, which is the biennium ending with the 2013-2014 school year.

(55) "Testing window" means a period of time designated annually by the Kentucky Department of Education within which all state-required assessment shall be administered.

(56) "Title I school or district" means a school or district eligible for and receiving Title I funds.

(57) "Writing portfolio score" means the score assigned by teachers, or score reassigned through portfolio scoring audit procedures, to a collection of a student's best work.

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 14, 2005 at 3 p.m.
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.
EDUCATION CABINET  
Board of Education  
Department of Education  
(As Amended at EAARS, September 7, 2005)  
703 KAR 5:130. School district accountability.  

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455  
STATUTORY AUTHORITY: KRS 158.029, 158.070, 158.6453, 158.6455  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158 6455 authorizes the Kentucky Board of Education to promulgate an administrative regulation establishing a local school district accountability program. This administrative regulation establishes eligibility for district rewards, and it establishes procedures for determining assistance and other consequences for local school districts having schools in need of assistance as defined in 703 KAR 5:020.  

Section 1. Required Participation in the National Assessment of Educational Progress. If a district is selected by the U.S. Department of Education or its designated contractors to participate in the state National Assessment of Educational Progress in reading, mathematics, and science at grades 4 and 8, the district shall participate fully.  

Section 2. (1) Dropout data generated at an A2-A6 school shall be attributed to the school district in which the A2-A6 school is located, unless the district exercises the option in subsection (2) of this section.  
(2) If a district where an A2-A6 school is located can identify the A1 school which would have served the student if the student had not required services offered by the A2-A6 school, then the dropout data regarding that student shall be assigned to the A1 school. If a school district exercises this option, the district shall accurately report specific student dropout data to the district containing the accountable A1 school to be included in the nonacademic data reported the Department of Education. If, after reasonable effort, the district cannot determine the proper A1 school of accountability, the district may request that the Kentucky Department of Education assign the data to the proper district.  

Section 3. A local school district in which all schools are classified as progressing or meets goal under 703 KAR 5:020 and meets the dropout criteria established for schools in order to earn rewards in 703 KAR 5:020 shall be declared an exemplary growth district and shall receive rewards as determined by the Kentucky Board of Education.  

Section 4. A district meeting adequate yearly progress in both reading and mathematics for two (2) consecutive years shall receive a reward or recognition as determined on an annual basis by the Department of Education.  

Section 5. (1) A local school district shall be held accountable for providing its schools appropriate instructional leadership and instructional support.  
(2) A local school district containing a school that is classified as Level 3 that was not classified as Level 3 the previous accountability cycle shall modify its district consolidated plan by including a specific support plan designed to assist each Level 3 school in improving its academic achievement. The plan shall address each of the areas listed in Section 6 of this administrative regulation and shall be sent to the local board of education members and to the Level 3 school council members or, if none exists, the principal, for approval.  
(3) If a school is classified as Level 3 for two (2) or more consecutive accountability cycles, the school district shall be subject to a district audit conducted by a district evaluation team. The team shall review each of the areas outlined in Section 5 of this administrative regulation and the district's implementation of the previous accountability cycle's school support plan. The district audit team shall also evaluate the district as to district responsibilities using "Standards and Indicators for School Improvement", which is incorporated by reference in 703 KAR 5:120.  

Section 6. A local school district shall address the following areas in its school support plan:  
(1) Instructional leadership shall include evidence that the local school district provides:  
(a) Instructional staff access to curriculum-related materials and training necessary to use curricular and data resources relating to the goals for Kentucky public schools established in KRS 158.645 and 158.6451 and the academic expectations established in 703 KAR 4.060 and the school's performance trends, which include state assessment data and other student achievement performance measures identified by the district;  
(b) A professional development planning process that results in training activities provided for the certified staff within the goals established in KRS 158.6451 and the local needs assessment required in KRS 158.303, annual professional development plan. The district shall include evidence that it equitably and effectively distributes professional development resources and has designed a district professional development program based on student achievement data; and  
(c) A structure for instructional improvement including evidence that the local school district is actively supporting a systematic, school improvement planning process involving appropriate stakeholder groups, including parents, business representatives, and the general public, and the district is using all available and appropriate data;  
(2) Financial services and support shall include evidence that district resources have been distributed to each school equitably and consistently in accordance with the requirements of KRS 3.246, School council allocation formula. The district shall also demonstrate that decisions about discretionary funds and other available resources not included in the school allocation formula are directed by an assessment of need or a required plan, all of which are data driven;  
(3) Safe and secure instructional facilities shall include evidence that adequate physical plant facilities and the maintenance of those facilities. In addition, safe and secure instructional facilities shall include evidence that the district school has reviewed and assisted in the implementation of the school-based safety plans dealing directly with issues related to discipline and a safe school environment; and  
(4) An effective certified employee evaluation program shall include evidence that the evaluation of the principal and certified staff has been implemented in a regular and timely manner consistent with the district's approved evaluation plan submitted under KRS 156.101 and that the evaluation process focuses on improving instruction.  

Section 7. The district evaluation team shall submit a report, including its recommendations, to the Commissioner of Education, the state's superintendent, and the local board of education within two (2) weeks of its review. The report shall be presented by a member of the district evaluation team at a local board of education meeting with opportunity for public comment. The district evaluation team recommendations may include the following:  
(1) No additional action is needed because the district is effectively implementing its school support plan which reflects strategies to meet the needs of the Level 3 school;  
(2) Revisions to the school support plan are needed even though the district has effectively implemented its plan;  
(3) Revisions in implementation procedures are needed as implementation of the school support plan is not effective; or  
(4) A management audit as provided in KRS 156.785 and 703 KAR 5:205 is needed because the district has not effectively developed or implemented its school support plan.  

Section 8. District Accountability Requirements of the *No Child Left Behind Act of 2001*. (1) For the purpose of determining whether a district has met the annual measurable objectives in reading or mathematics, the Kentucky Department of Education, using reading and mathematics data from the 2001-2002 school year, shall establish a single starting point for each content area at each accountability level (elementary, middle, or high school) as described in 703 KAR 5:020.
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(2) For purposes of determining adequate yearly progress, a local district shall be held accountable based on an aggregated average of the performance of elementary, middle, and high school students who have been enrolled in the district for a full academic year and producing district level accountability statistics including:
(a) Percent proficient and above in reading and mathematics;
(b) School district classification criteria as described in subsection (3)(b) of this section [Accountability indices];
(c) Graduation rates; and
(d) Participation rates.

(3) If a district does not meet an annual measurable objective based on the current year aggregated average of the performance of the elementary, middle, or high school students, the aggregated average may be computed based on the most recent two (2) or three (3) years of student performance data in reading and mathematics.

(4) These statistics shall be used to determine if a district has met adequate yearly progress as measured against the annual measurable objectives established in 703 KAR 5:020, Section 10(11).

[44] Meeting adequate yearly progress. A district shall be determined to have made adequate yearly progress for a school year if:
(a) The district and all subpopulations of sufficient size identified in 20 U.S.C. 6301 et. seq., met the annual measurable objectives in both reading and mathematics or met the conditions described as "safe harbor" in 703 KAR 5.001;
(b) The district had a school district classification of any category of progressing or meets goal in the CATS annual or midpoint classification, whichever occurred more recently, followed-progression or met the criteria on the accountability index at the elementary and middle school accountability levels, or for a district [school] in the Assistance category which demonstrates growth in the accountability index at or above the state average for the specific grade-level configuration as defined in 703 KAR 5:001;
(c) The district demonstrated progress or met the annual goal for graduation rate as defined in 703 KAR 5.001; and
(d) The district had a participation rate of at least ninety-five (95) percent of the enrolled students and ninety-five (95) percent of each subpopulation of sufficient size identified in 20 U.S.C. 6301 et. seq. Participation rate may be computed for the current year or, as an average of the most recent two (2) or three (3) years, to reach ninety-five (95) percent.

[45] No child left behind (NCLB) Improvement district determination. A district shall be identified as a "NCLB Improvement district" if for two (2) consecutive years the district fails to make adequate yearly progress in the same content area, as defined in 703 KAR 5.001 reading or mathematics.

[46] Confidence intervals. A district shall be considered to have met the annual measurable objective in reading or mathematics if:
(a) The percent of students scoring proficient or above in a district meets or exceeds the annual measurable objective in reading or mathematics; or
(b) The annual measurable objective falls within the ninety-nine (99) percent confidence interval placed around the district's percent of students proficient and above. If more than the current year aggregated average of the performance of the elementary, middle, or high school students is used to compute an annual measurable objective, the confidence interval shall also be based on the same most recent two (2) or three (3) years of student performance data upon which the aggregated average is based.

[47] Students included in the participation rates. A student enrolled in Kentucky public school district on the first day of the testing window at each accountability level shall be included in the calculation of the district's participation rates calculated for the total population and for each subpopulation of sufficient size identified in 20 U.S.C. 6301 et. seq.

[48] Students included in determining whether a district meets annual measurable objectives. Beginning with data from the 2003-2004 school year, a student enrolled in a district for a full academic year shall be included in the district calculations of the percent of students performing at the proficient level or above in both reading and mathematics for purposes of federal accountability decisions.

[49] Annual measurable objectives in reading and mathematics - 2003 through 2014. The annual measurable objectives for reading and mathematics for a district shall be those established in 703 KAR 5:020, Section 10(11).

[46] Initial consequences for NCLB Improvement districts. If a district is identified as a NCLB Improvement district, the district:
(a) Shall, not later than three (3) months after being identified, develop or revise a district improvement plan. The district shall implement the plan expeditiously, but not later than the beginning of the next school year after the school year in which the district was identified as a NCLB Improvement district;
(b) May request technical assistance from the Kentucky Department of Education, and
(c) May be subject to corrective action taken by the Kentucky Department of Education as required by 20 U.S.C. 6301 et seq.

[44] Subsequent consequences for NCLB Improvement districts. If a district is identified as a NCLB Improvement district and fails to make adequate yearly progress by the end of the second full school year after the identification, the district shall be subject to corrective action taken by the Kentucky Department of Education as required by 20 U.S.C. 6301 et seq.

[46] Duration of consequences. If a district identified as a NCLB Improvement district makes adequate yearly progress in both reading and mathematics as defined in 703 KAR 5:001 for two (2) consecutive school years after identification, the district shall no longer be identified as a NCLB Improvement district and the district shall not be subject to federal consequences.

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
PERMITTED BY AGENCY: August 4, 2005
FILED WITH LRC: August 5, 2005 at noon
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Meri Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Labor-Management Relations and Mediation
(As Amended at ARRS, September 13, 2005)

803 KAR 3:060. Procedures for selecting and certifying exclusive representatives of police officers employed by urban-county or consolidated local governments and firefighters employed by urban-county governments.

RELATES TO: KRS 67A.6905, 67C.408
STATUTORY AUTHORITY: KRS 67A.6905(3), 67C.408(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 67A.6905(3) requires the Department of Labor to promulgate administrative regulations to facilitate elections for exclusive representatives of police officers and firefighters employed by urban-county governments. KRS 67C.408(3) requires the department to promulgate administrative regulations to facilitate elections for exclusive representatives of police officers employed by consolidated local governments. This administrative regulation establishes procedures for selecting and certifying exclusive representatives of police officers employed by urban-county or consolidated local governments and firefighters employed by urban-county governments.

Section 1. Definitions. (1) "Appropriate Collective Bargaining Unit" means a group of police officers or firefighters, as determined by the department considering the factors outlined in KRS 67A.6905(2) and KRS 67C.408(2), which is the subject of a petition for election.
(2) "Commissioner" is defined in KRS 336.010(1) [means the Commissioner of the Department of Labor, Environmental and Public Protection Cabinet], created by KRS 12.020].
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(3) “Cross petition for election” means a petition authorized by KRS 67A.6905(1) or 67C.408(1) seeking to intervene in a pending petition to elect an exclusive representative of an appropriate collective bargaining unit.

(4) “Cross petitioner” means a person, organization, or employer, authorized by KRS 67A.6905(1) and 67C.408(1) to request an election for an exclusive representative of an appropriate collective bargaining unit, who files a cross petition for election.

(5) “Department” is defined in KRS 336.010(2) [means the Department of Labor, Environmental and Public Protection Cabinet, created by KRS 12.020, which replaced the Labor Cabinet].

(6) “Exclusive representative” is defined in KRS 67A.6901(2)(a) and 67C.400(3).

(7) “Labor Organization” is defined in KRS 67A.6901(5)(4) and 67C.400(2).

(8) “Notice of Election” means a notice prepared by the department containing the information for an exclusive representative, including the appropriate collective bargaining unit; voting eligibility criteria; date, hours, method, and location of the election; sample ballot; and effect of the vote.

(9) “Petition for election” means a petition authorized by KRS 67A.6905(1) or 67C.408(1) requesting an election for an exclusive representative of an appropriate collective bargaining unit.

(10) “Petitioner” means a person, group, organization, or employer, authorized by KRS 67A.6905(1) and 67C.408(1) to request an election for an exclusive representative of an appropriate collective bargaining unit, who files a petition for election.

Section 2. Petition for Election. (1) An original and three (3) copies of a petition for election shall be filed with the department and shall include the following:

(a) The petitioner’s name, address, and affiliation, if any, along with the name and telephone number of the petitioner’s principal representative;
(b) The name and address of the urban-county or consolidated local government employer, if the employer is not the petitioner, along with the name and telephone number of the employer’s principal representative;
(c) A description of the claimed appropriate collective bargaining unit specifying the following:
   1. The classifications of employees included and excluded;
   2. The approximate number of employees;
   3. The interests the employees have in common regarding wages, hours, and other working conditions; and
   4. The history of collective bargaining among employees;
(d) The name and address of any known labor organization that represents police officers or firefighters in the claimed appropriate collective bargaining unit;
(e) A clear and concise statement setting forth the issues raised by the petition, including the proof required by KRS 67A.6905(1)(a) through (b) or 67C.408(1)(a) through (b);
(f) Any other relevant facts; and

(g) The petitioner’s signature and a declaration, under penalty of perjury, by the person signing the petition that the contents of the petition are true and correct to the best of the person’s knowledge.

(2) The party filing a petition, cross petition, or other document permitted or required by this administrative regulation shall serve a copy on all affected parties.

(3) Within fifteen (15) days of the date a petition for election is filed, the department shall notify in writing any affected party identified in the petition.

Section 3. Cross Petition for Election. (1) A crosspetition for election shall be filed within fifteen (15) days of the date the petition for election is filed with the department.

(2) A crosspetition for election shall be in the same form and contain the same information required of a petition for election outlined in Section 2 of this administrative regulation.

(3) Within five (5) days of the date a cross petition for election is filed, the department shall notify in writing any affected party identified in the cross petition for election.

Section 4. Duty to Furnish Information and Cooperate. (1) After a petition and any cross petition are filed, the department may direct the petitioner, cross petitioner, or any other affected party to submit additional information the department deems relevant to an investigation of the issues raised by the petition or cross petition, as required by KRS 67A.6905(1) and 67C.408(1).

(2) In determining the appropriate collective bargaining unit, as required by KRS 67A.6905(2) and 67C.408(2), the department may direct the urban-county or consolidated local government employer to furnish a current, alphabetized list of employees and job classifications included or excluded from the appropriate collective bargaining unit claimed in the petition.

(3) All affected parties shall cooperate with the department and each other in every aspect of the election process. This obligation includes submitting all required and requested information, making a good faith effort to agree on procedural matters, and participating fully in conferences. Failure to cooperate may result in the department taking appropriate action, including dismissing a petition or denying intervention.

Section 4. [5.] Election Determination and Notification. (1) Within forty-five (45) days of the date a petition for election is filed, the department shall evaluate the petition and any cross petition for validity. The department shall issue a notice setting the time for evaluation up to thirty (30) days if it requests additional information from the petitioner, cross petitioner, or any other affected party, as outlined in Section 5 of this administrative regulation.

(2) If the department determines that a petition is valid, it shall establish the appropriate collective bargaining unit, including voter eligibility, and notify in writing all affected parties that an election shall be held. If the department determines that a petition is invalid, the petition shall be dismissed.

(3) If the department determines that a cross petition for election is valid, it shall notify in writing all affected parties that the cross petitioner shall be allowed to intervene. If the department determines that a cross petition is invalid, the cross petition shall be dismissed, and the cross petitioner shall not be allowed to intervene.

(4) Parties shall make a good faith effort to enter into agreements on the procedural conduct of the election, including the date, hours, method, and location. If the parties cannot agree, the department shall determine the details of the election.

(5) Within fifteen (15) days of the date the department notifies the parties in writing whether the petition and any cross petition are valid, it shall issue a notice setting the time for the election.

(6) At least ten (10) days prior to the date of the election, the affected urban-county or consolidated local government employer shall either post the notice of election in a conspicuous place available to all affected employees or distribute the notice to all affected employees in a manner by which employment notices are normally distributed.

Section 6. Election Procedures. (1) The department shall supervise all elections.

(2) Voting shall be by secret ballot.

(3) The cost of printing and mailing ballots, if any, shall be borne equally by those whose names appear on the ballot.

(4) The petitioner shall appear first on the ballot. Cross petitioners shall appear in rank according to the date and time the department receives each cross petition. "No representative" or "none" shall be last on the ballot.

(5) If there is no pending cross petition, a petitioner may withdraw its request for an election at any time by filing a notice in writing with the department. If there is a valid cross petition, an election shall be held; however, either the petitioner or cross petitioner may remove its name from the ballot at any time prior to the date the election is held.

(6) Parties may choose equal numbers of observers to represent them at all polling locations, if elections are held on sites, and at the ballot counting, subject to the department’s approval. Observers for the employer shall not be supervisors of any employees in the affected collective bargaining unit.

(a) Each party shall file a written list of its proposed observers with the department at least ten (10) days prior to an election.

(b) Written objections to observers, stating specific reasons,
shall be filed with the department within five (5) days after service of the list.

(c) The department's decisions on observers are final and binding.

(7) If the election is conducted on site, the following procedures shall apply:

(a) Polling locations shall be clearly marked. A private area or booth shall be available at each location for voters to mark their ballots in secret.
(b) The parties shall not distribute or post campaign literature within twenty-five (25) feet of the entrance of any polling site during polling hours.
(c) Cameras, video equipment, and similar means of surveillance shall be prohibited within the actual polling area while employees are voting.
(d) The department representative shall examine the ballot boxes in the presence of the authorized observers immediately prior to opening the polls. When the polls are opened, each ballot box shall be sealed, except for one (1) opening on the top for voters to insert their ballots.
(e) Employees shall present appropriate identification to the department representative to vote. A voter shall make a cross or check in the circle or block on the ballot corresponding to the voter's choice. If the voter inadvertently spoils a ballot, he or she may return the ballot to the department representative, who shall give the voter another ballot. The spoiled ballot shall be placed in a spoiled ballot envelope; the department representative shall seal the envelope; the authorized observers shall initial the envelope; and the department representative shall deposit the envelope in the ballot box.
(f) A voter shall fold his or her ballot so that no part of its face is exposed and, after leaving the voting area or booth, shall deposit the ballot in the ballot box.
(g) The department representative may privately assist any voter who, due to physical or other disability, is unable to mark his or her ballot.
(h) The department representative or any authorized observer may challenge, for good cause, the eligibility of any voter. The observer shall state the reason for the challenge. The department representative shall challenge any voter whose name does not appear on the eligibility list. A challenged voter shall be permitted to vote in secret. The department representative shall place the challenged voter's ballot in a challenged ballot envelope, seal the envelope, and mark the voter's name and the reason for the challenge on the outside of the envelope. The authorized observers shall initial the envelope, and the department representative shall deposit the envelope in the ballot box.
(i) If the department representative stops the election for any reason, he or she shall completely seal the ballot boxes in the presence of the authorized observers. The ballot boxes shall remain in the custody of the department representative until voting resumes.
(j) Upon conclusion of the voting, the department representative shall completely seal the ballot boxes, which shall be initialized by the authorized observers, and bring them to a predetermined location. All ballot boxes shall be opened when [at the time] they are going to be counted, and the ballots shall be conformed for tallying.
(k) Ballots shall be tallied in accordance with the procedure established in Section 7 of this administrative regulation.
(l) If the election is conducted by mail, the following procedures shall apply:

(a) The department shall mail a packet containing a ballot; a ballot envelope; a pre-printed employee identification label with signature line; a pre-addressed, stamped, return envelope; and instructions to each eligible voter.
(b) The instructions shall advise the voter to mark the ballot without identifying himself or herself; place the ballot in the ballot envelope; seal the ballot envelope; place it in the return envelope; seal the return envelope; pre-address the envelope; and sign the label and mail the envelope. The instructions shall also advise the voter of the date by which ballots shall be received in order to be counted.
(c) Mail ballots shall remain unopened in their return envelopes until the date set for tallying. On the date set for tallying, the department representative and the authorized observers may challenge any ballots prior to the opening of the return envelopes. The voter's name, signature, and employee identification code on the label covering the outside envelope seal shall be used to determine if the voter is an eligible employee. Challenged ballots shall be handled in accordance with Section 7 (3) of this administrative regulation.
(d) All ballots that have not been challenged shall be removed from their return envelopes and conformed prior to tallying. The ballots shall be tallied in accordance with Section 7 of this administrative regulation.

Section 7. Tallying Ballots. (1) After all elections, the department shall tally ballots in the presence of authorized observers.
(2) Ballots which are delayed, torn, or marked in such a manner that they do not indicate the voter's clear intent shall be void and not counted.
(3) Challenged ballots shall be handled as follows:
(a) The department representative shall impound the challenged ballots, which shall be considered only if they could be determinative of the outcome of the election.
(b) If challenged ballots could affect the outcome of the election, the department representative shall examine each challenged ballot, consult the established eligibility criteria, and decide whether the ballot is legitimate and shall be counted.
(c) Representation shall be determined by the majority of the valid ballots cast.
(d) If there are only two (2) choices on the ballot (one (1) labor organization and "no representation"), each of which receives fifty (50) percent of the vote, the department shall certify that a majority of the eligible employees have not manifested a desire to be represented by the labor organization.
(e) If there are three (3) or more choices on the ballot (two (2) or more labor organizations and "no representation") and no choice receives a majority of the valid ballots cast, the department shall conduct a runoff election between the two (2) choices that received the most votes, as provided in KRS 67A.690(3), 67C.408(3), and Section 8 of this administrative regulation.
(7) The department shall preserve and protect all ballots and election records for at least sixty (60) days from the date results of the election have been certified.

Section 8. Runoff Election. (1) A runoff election prescribed in KRS 67A.690(3) or 67C.408(3) shall not be held until the department or commissioner has ruled on any challenges to ballots and objections to the election.
(2) In order to vote in a runoff election an employee shall have been eligible to vote in the original election and still be in the appropriate collective bargaining unit on the date of the runoff election.
(3) The parties shall follow the procedures in a runoff election established for elections in Section 6 of this administrative regulation.

Section 9. Certification of Election Results. If challenged ballots are insufficient in number to affect the results, no runoff election is to be held, and no timely objections are filed as provided in Section 9 of this administrative regulation, the department shall promptly certify the results of the election and notify all affected parties in writing.

Section 10. Objections to Election. (1) Within five (5) days after receiving the vote tally, any party to the election may file objections to the conduct of the election.
(a) Objections shall be in writing and contain a brief statement of facts upon which the objections are based.
(b) An original of the objections, containing the declaration required by Section 211(g) of this administrative regulation, and three (3) copies shall be filed with the commissioner.
(c) The party filing objections shall serve a copy of the objections upon each of the other parties at the same time it files with the commissioner.
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(2) Within ten (10) days after the objections are filed, the
objecting party shall submit to the commissioner, with copies served
upon all parties, a statement of material facts and issues, including
a summary of evidence supporting the objections.
(3) Within ten (10) days of the date the statement of material
facts and issues is filed with the commissioner, an affected party
may file a response.
(4) The commissioner or designated representative shall
promptly investigate the allegations, conduct a conference with all
affected parties, and issue a report within thirty (30) days of re-
ceiving the statement of material facts and issues.
(a) If the commissioner finds reasonable cause to believe that
the election was not fairly and freely chosen by a majority of the
employees in the appropriate collective bargaining unit, he or she
shall order a new election and any other corrective action neces-
sary to insure the fairness of the election process.
(b) If the commissioner determines, upon investigation, that the
election was fairly and freely chosen by a majority of the employ-
es in the appropriate collective bargaining unit, he or she shall
certify the results of the election.
(c) The commissioner’s findings regarding the objections are
final and binding.

LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 15, 2005 at 9 a.m.
CONTACT PERSON: Leslie E. Renkey, Director, Labor Legal
Division, Office of Legal Services, Environmental and Public Pro-
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CABINET FOR ENVIRONMENTAL AND PUBLIC PROTECTION
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, September 13, 2005)

806 KAR 17:390. Benefits and disclosures in Medicare
supplement insurance policies.

RELATES TO: KRS 304.12-020, 304.14-500-304.14-550,
304.17-311, 304.18-034, 304.32-275, 304.38-205, 42 U.S.C. 1395-
1395w-101, 1395w-152.

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510,
304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-
110(1) authorizes the Executive Director [Commissioner] of Insur-
ce to promulgate administrative regulations necessary for or as
an aid to the effectuation of any provision of the Kentucky Insur-
ance Code, as defined in KRS 304.010. KRS 304.14-510 author-
izes the Executive Director [Commissioner] of Insurance to promul-
gate administrative regulations establishing minimum standards
for Medicare supplement insurance policies. KRS 304.32-250 author-
izes the Executive Director [Commissioner] of Insurance to pro-
mulgate administrative regulations which he deems necessary
for the proper administration of KRS 304.32. KRS 304.38-150
authorizes the Executive Director [Commissioner] of Insurance to
promulgate administrative regulations which he deems necessary
for the proper administration of KRS Chapter 304.38. This admin-
istrative regulation establishes minimum standards for benefits and
disclosures in Medicare supplement insurance policies.

Section 1. Definitions. (1) "Activities of daily living" means ac-

tivities such as bathing, dressing, personal hygiene, transferring,
eating, ambulating, assistance with drugs that are normally self-
administered, and changing bandages or other dressings.
(2) "Applicant" is defined in KRS 304.14-500(1).
(3) "At-home recovery visit" means the period of a visit re-

duired to provide at-home recovery care, without limit on the du-

tation of the visit, except each consecutive four (4) hours in a twenty-

two (24) hour period of services provided by a care provider is one

(1) visit.
(4) "Care provider" means a duly-qualified or licensed home
health aide/homemaker, personal care aid, or nurse provided
through a licensed home health care agency or referred by a li-
censed referral agency or licensed nurse registry.
(5) "Certificate" is defined in KRS 304.14-500(2).
(6) "Certificate form" means the form on which the certificate is
delivered or issued for delivery by the insurer.
(7) "Commissioner" is defined in KRS 304.1-060(1).
(8) "Complainant" means any dissatisfaction expressed by an
individual concerning a Medicare Select issuer or its network pro-

viders.
(9) "Emergency care" means care needed immediately
because of an injury or an illness of sudden and unexpected onset.
(10) "Executive director" means the Executive Director of the
Office of Insurance.
(11) "Grievance" means dissatisfaction expressed in writing
by an individual insured under a Medicare Select policy or certificate
with the administration, claims practices, or provision of services
concerning a Medicare Select issuer or its network providers.
(12) "Insurer" means any provider of care as a place of
residence, other than a hospital or skilled nursing facility, if the
place qualifies as a residence for home health care services covered
by Medicare.
(13) "Insurer contract" means an insurance policy; a sub-
scriber contract issued by a nonprofit hospital, medical-surgical,
dental, and health service corporation; and an enrollee contract
issued by a health maintenance organization.
(14) "Issuer" means Insurance companies, fraternal benefit
societies, health care service plans, health maintenance organiza-
tions, and any other entity delivering or issuing for delivery in this
state Medicare supplement policies or certificates.
(15) "Medicare" is defined in KRS 304.14-500(4).
(16) "Medicare Select issuer" means an issuer offering, or
seeking to offer, a Medicare Select policy or certificate.
(17) "Medicare Select policy" or "Medicare Select certificate"
means, respectively, a Medicare supplement policy or certificate
that contains restricted network provisions.
(18) "Network provider" means a provider of health care, or a
group of providers of health care, which has entered into a written
agreement with the Issuer to provide benefits insured under a
Medicare Select policy.
(19) "Office" means the Office of Insurance.
(20) "Policy form" means the form on which the policy is deliv-
ered or issued for delivery by the Issuer.
(21) "Restricted network provision" means any provision
which conditions the payment of benefits, in whole or in part, on
the use of network providers.
(22) "Secretary" means the Secretary of the United States
Department of Health and Human Services.
(23) "Service area" means the geographic area approved by
the commissioner within which an issuer is authorized to offer a
Medicare Select policy.
(24) "Structure, language, and format" means style, ar-

rangement, and overall content of a benefit.

Section 2. Purpose, Applicability, and Scope. (1) The purpose
of this administrative regulation shall be [6] to provide for the rea-
sonable standardization of coverage and to simplify terms and
benefits of Medicare supplement policies, to facilitate public un-
derstanding and comparison of the policies, to eliminate provisions
contained in these policies which may be misleading or confusing
in connection with the purchase of the policies or in connection
with the settlement of claims, and to provide for full disclosure in
the sale of health insurance coverage to persons eligible for Medi-
care.
(2) This administrative regulation shall apply to:
(a) A Medicare supplement policy delivered or issued for deliv-
er in this state on or after the effective date of this administrative
regulation; and
(b) A certificate issued under a group Medicare supplement
policy, which a certificate has been delivered or issued for delivery
in this state.
(3) This administrative regulation shall not apply to a policy or
contract of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof; for employees or former employees, or a combination thereof; or for members or former members of labor organizations, or a combination thereof.

Section 3. Policy Definitions and Terms. A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless the policy or certificate contains terms or definitions which conform to those in this section.

(1) "Accident", "accidental Injury", or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is a direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force.

(b) The definition may provide that injuries shall not include injures for which benefits are provided or available under any workers' compensation, employer's liability, or similar law, or motor vehicle no-fault insurance plan, unless the definition is prohibited by law.

(2) "Benefit period", or "Medicare benefit period", shall not be defined more restrictively than as defined in the Medicare Program.

(3) "Convalescent nursing home", "extended care facility", or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare Program.

(4) "Health care expenses" shall be defined as expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(a) these expenses shall not include:

1. Home office and overhead costs;
2. Advertising costs;
3. Commissions and other costs of acquiring insurance business;
4. Taxes;
5. Capital costs;
6. Administrative costs; and
7. Claims processing costs.

(5) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Healthcare Organizations (Hospitals), but shall not be defined more restrictively than as defined in the Medicare Program.

(6) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended", or "Title I, Part I of Pub.L. 89-97, as enacted by the 89th Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(7) "Medicare-eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(8) "Physician" shall not be defined more restrictively than as defined in the Medicare Program.

(9) "Sickness" shall not be defined more restrictively than the following: "sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force". The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

Section 4. Policy Provisions. (1) Except for permitted preexisting condition clauses as described in Sections 5(2)(a) and 6(1)(a) of this administrative regulation, a policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) A Medicare supplement policy shall not contain a prohibition or elimination period.

(3) A Medicare supplement policy or certificate shall not use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(4) A Medicare supplement insurance policy in force in this state shall not contain benefits that duplicate benefits provided by Medicare.

(5) Subject to Sections 5(2)(d), (e), and (g) and 6(1)(d), and (g) of this administrative regulation, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Part D at theoption of the policyholder.

(6) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(7) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder elects Medicare Part D coverage.

(a) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan, and:

(b) Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

Section 5. Minimum Benefit Standards. (1) A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate if it does not meet or exceed the following minimum standards. These are minimum standards and shall not preclude the inclusion of other provisions or benefits that are consistent with these standards. This section applies to a Medicare supplement policy issued prior to January 1, 1992.

(2) General standards. The following standards shall apply to Medicare supplement policies and certificates and shall be in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with these changes.

(d) A "noncancelable", "guaranteed renewable", or "noncancelable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium; or
2. Be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(e) Except as authorized by the executive director [commissioner], an issuer shall not cancel or nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subparagraph 4 of this paragraph, the issuer shall offer certificate
holders an individual Medicare supplement policy. The issuer shall offer the certificate holder at least the following choices:

a. An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

b. An individual Medicare supplement policy which provides only those [seek] benefits as are required to meet the minimum standards as defined in Section 6(2) of this administrative regulation.

3. If membership in the group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in subparagraph 2 of this paragraph; or

b. Offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(g) A Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by 42 U.S.C. 1395w-101 to 1395w-152, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this section.

3. Minimum benefit standards

(a) Coverage of: (A) Medicare-eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare-eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient renal days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days,

(e) Coverage under Medicare Part A for the reasonable cost of the following (3) pints of blood or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part B, and

(f) Coverage for the.consumption amount, or if hospital outpatient department services are paid under a prospective payment system, the copayment amount, of Medicare-eligible expenses under Part B regardless of hospital confinement subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible.

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part A, subject to the Medicare deductible amount.

Section 6. Benefit Standards for Policies or Certificates Issued or Delivered on or after January 1, 1992. The following standards shall apply to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992. A Medicare certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards.

1. General standards. The following standards shall apply to Medicare supplement policies and certificates and shall be in addition to all other requirements of this administrative regulation:

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents, and shall not contain a probationary or elimination period.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost-sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with these changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable, and

1. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and

2. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subparagraph 5 of this paragraph, the issuer shall offer certificate holders an individual Medicare supplement policy with (the all the certificate holder):

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits which otherwise meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall offer continuation and conversion coverages in accordance with subparagraph 3 of this paragraph.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

6. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by 42 U.S.C. 1395w-101 to 1395w-152, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this paragraph.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(g) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under 42 U.S.C. 1396 to 1396u-8 and only if the policyholder or certificate holder notifies the issuer of the policy or certificate within thirty (30) days after the date the individual becomes entitled to the assistance.

2. If the suspension occurs and if the policyholder or certificate

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holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated (effective as of the date of termination of the entitlement to medical assistance) if the policyholder or certificate holder provides notice of loss of the entitlement within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of the entitlement.

3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under 42 U.S.C. 426(b) and is covered under a group health plan as defined in 42 U.S.C. 1395Y(b)(1)(A)(v). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of such loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of suspension.

4. Reinstatement of coverages as described in subparagraphs 2 and 3 of this paragraph:

a. Shall not provide for any waiting period with respect to treatment of pre-existing conditions;

b. Shall provide for resumption of coverage that [which] is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part B enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension;

c. Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

2. Standards for basic ("core") benefits common to [all] benefit plans that through existing reserves, a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the Medicare supplement insurance benefit plans in addition to the basic "core" package. These Medicare supplement insurance benefit plans shall not substitute for the basic "core" package.

a. Coverage of Part A Medicare-eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

b. Coverage of Part A Medicare-eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

d. Coverage of the first three (3) pints of blood or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 420.6(7)(a), unless replaced in accordance with 42 C.F.R. 409.87(c)(2); and

e. Coverage for the coinsurance amount or in the case of hospital outpatient department services paid under a prospective system, the copayment amount; of Medicare-eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

3. Standards for additional benefits. The following additional benefits shall be included in Medicare supplement benefit Plans "B" through "J" only as provided by Section 7 of this administrative regulation.

a. Medicare Part A deductible: coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period;

b. Medicare Part B deductible: coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A;

c. Medicare Part B deductible: coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement;

d. Eighty (80) percent of the Medicare Part B excess charges: coverage for eighty (80) percent of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare Program or state law, and the Medicare-approved Part B charge;

e. One hundred percent (100) percent of the Medicare Part B excess charges: coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare Program or state law, and the Medicare-approved Part B charge;

f. Basic outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2005;

g. Extended outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006;

h. Medically-necessary emergency care in a foreign country: coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically-necessary emergency hospital, physician, and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250 and a lifetime maximum benefit of $50,000;

i. Preventive medical care benefit:

1. Coverage for the following preventive health services not covered by Medicare:

a. [4-] An annual clinical preventive medical history and physical examination that may include tests and services from clause b of this subparagraph (subparagraph 2 of this paragraph) and patient education to address specified preventive health care measures; and
b. Preventive [2-] Any one (1) or a combination of the following preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician and include:

a. Digital rectal examination;

b. Diphtheria, tetanus, and whooping cough booster (every ten (10) years);

c. Any other tests or preventive measures determined appropriate by the attending physician.

2. Reimbursement shall be for the actual charges up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in procedure codes, established by the secretary pursuant to 42 U.S.C. 1395w-4(c)(5), to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare and is not the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in procedure codes, established by the secretary pursuant to 42 U.S.C. 1395w-4(c)(5), to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare and is not the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in procedure codes, established by the secretary pursuant to 42 U.S.C. 1395w-4(c)(5), to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare and is not the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in procedure codes, established by the secretary pursuant to 42 U.S.C. 1395w-4(c)(5), to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare and is not the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in procedure codes, established by the secretary pursuant to 42 U.S.C. 1395w-4(c)(5), to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare and is not the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in procedure codes, established by the secretary pursuant to 42 U.S.C. 1395w-4(c)(5), to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare and is not the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in procedure codes, established by the secretary pursuant to 42 U.S.C. 1395w-4(c)(5), to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare and is not the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in procedure codes, established by the secretary pursuant to 42 U.S.C. 1395w-4(c)(5), to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare and is not the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in procedure codes, established by the secretary pursuant to 42 U.S.C. 1395w-4(c)(5), to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare and is not the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in procedure codes, established by the secretary pursuant to...
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c. Coverage is limited to:
(i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home health care plan of treatment.
(ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit.
(iii) $1,600 per calendar year.
(iv) Seven (7) visits in any one (1) week.
(v) Care furnished on a visiting basis in the insured's home.
(vi) Services provided by a care provider as defined in this section.
(vii) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.
(viii) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services for no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

2. Coverage shall be [e] excluded for:

a. Home care visits paid for by Medicare or other government programs; and
b. Care provided by family members, unpaid volunteers, or persons who are not care providers.

(d) Standards for benefit plans K and L are established in Section 7(b) of this administrative regulation, [and (d)] New or innovative benefits: an issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. New or innovative benefits are defined as benefits that are not reimbursable under Medicare, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.

Section 7. Standard Medicare Supplement Benefit Plans. (1) An issuer shall be available to each policyholder or certificate holder a policy form or certificate form containing only the basic "core" benefits, as defined in Section 6(2) of this administrative regulation.

(2) Groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in this state, except as may be permitted in Section 7(b) and 8 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans [Plans A through L and L through [J]] listed in this section [subsection] and conform to the definitions in Sections 1 of 806 KAR 17-400 and (7), (10), (15), (14), (16), (20), and (32) of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Section 6(2) of this administrative regulation and list the benefits in the order shown in this section [subsection].

(4) An issuer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic "core" benefits common to all benefit plans, as defined in Section 6(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; and the Medicare Part A deductible, as defined in Section 6(3)(a) of this administrative regulation.

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; Medicare Part B deductible; and medically-necessary emergency care in a foreign country, as defined in Section 6(3)(a), (b), (c), and (h) of this administrative regulation, respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; medically-necessary emergency care in a foreign country; and the at-home recovery benefit, as defined in Section 6(3)(a), (b), (h), and (j) of this administrative regulation, respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; medically-necessary emergency care in a foreign country; and preventive medical care, as defined in Section 6(3)(a), (b), (h), and (j) of this administrative regulation, respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible, the skilled nursing facility care; the Part B deductible; 100% of the Medicare Part B excess charges; and medically-necessary emergency care in a foreign country, as defined in Section 6(3)(a), (b), (c), (e), and (h) of this administrative regulation, respectively.

(g) Standardized Medicare supplement benefit high deductible Plan "F" shall include only the following: 100% of covered expenses following the payment of the annual high deductible Plan "F" deductible. The covered expenses shall include the core benefits as defined in Section 6(2) of this administrative regulation in addition to the following:

1. Medicare Part A deductible;
2. Skilled nursing facility care;
3. The Medicare Part B deductible;
4. 100% of the Medicare Part B excess charges; and
5. Medically-necessary emergency care in a foreign country, as defined in Section 6(3)(a), (b), (d), (h), and (j) of this administrative regulation, respectively. The annual high deductible plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year it shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(h) Standardized Medicare supplement benefit Plan "G" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; eighty (80) percent of the Medicare Part B excess charges; medically-necessary emergency care in a foreign country; and the at-home recovery benefit, as defined in Section 6(3)(a), (b), (d), (h), and (j) of this administrative regulation, respectively.

(i) Standardized Medicare supplement benefit Plan "H" shall consist only of the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; basic prescription drug benefit; and medically-necessary emergency care in a foreign country, as defined in Section 6(3)(a), (b), (f), and (h) of this administrative regulation, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(j) Standardized Medicare supplement benefit Plan "I" shall consist only of the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; 100% of the Medicare Part B excess charges; basic prescription drug benefit; medically-necessary emergency care in a foreign country; and at-home recovery benefit, as defined in Section 6(3)(a), (b), (f), (h), and (j) of this administrative regulation, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(k) Standardized Medicare supplement benefit Plan "J" shall consist only of the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; Medicare Part B deductible; 100% of the Medicare Part B excess charges; extended prescription drug benefit; medically-necessary emergency care in a foreign country;
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preventive medical care; and at-home recovery benefit, as defined in
Section 6(3)(a), (b), (c), (e), (g), (h), (i), and (j) of this administrative
regulation, respectively. The outpatient prescription drug bene-
fit shall not be included in a Medicare supplement policy after De-
cember 31, 2005.

(i) Standardized Medicare supplement benefit high deductible
Plan "J" shall not include an outpatient prescription drug benefit
deductible after December 31, 2005. The plan shall consist of 100% of cov-
ered expenses following the payment of the annual high deductible
Plan "J" deductible. The covered expenses include the core bene-
fits as defined in Section 6(2) of this administrative regulation in
addition to the following:

1. The Medicare Part A deductible;
2. Skilled nursing facility care;
3. Medicare Part B deductible;
4. Medicare Part B excess charges;
5. Extended outpatient prescription drug benefit;
6. Medically-necessary emergency care in a foreign country;
7. Preventive medical care benefit; and
8. At-home recovery benefit, as defined in Section 6(3)(e), (b),
   (c), (e), (g), (h), (i) and (j) of this administrative regulation, respec-
   tively. The annual deductible Plan "J" deductible shall consist of
   all out-of-pocket expenses, other than premiums, for services cov-
ered by Medicare supplement Plan "J" policy, and shall be $1500
   for 1998 and 1999, and shall be based on the calendar year.
   It shall be adjusted annually thereafter by the secretary to reflect the
   change in the Consumer Price Index for all urban consumers for the
twelve (12) month period ending with August of the preceding
   year, and rounded to the nearest multiple of ten (10) dollars.

(ii) The modified Medicare supplement plans man-
dated by 42 U.S.C. 1395w-101-1395w-152 shall be:

(a) Standardized Medicare supplement benefit plan K shall
consist of the following:

1. Coverage of 100% of Part A hospital inpatient care cost for
each day used from the 61st through the 90th day in any Medi-
  care benefit period.
2. Coverage of 100% of the Part A hospital inpatient care
  amount for each Medicare lifetime inpatient reserve day used from
  the 91st through the 150th day in any Medicare benefit period;
3. Upon exhaustion of the Medicare hospital inpatient cover-
   age, including the lifetime reserve days, coverage of 100% of the
   Medicare Part A eligible expenses for hospitalization paid at the
   applicable prospective payment system rate, or other appropriate
   Medicare standard of payment, subject to a lifetime maximum
   benefit or an additional 365 days. The provider shall accept the
   issuer's payment as payment in full and shall not bill the insured for
   any balance;
4. Coverage for fifty (50) percent of the Medicare Part A inpa-
   tient hospital deductible amount per benefit period until the out-of-
   pocket limitation is met as described in subparagraph 10 of this para-
   graph;
5. Skilled nursing facility care coverage for fifty percent (50%)
   of the coverage amount for each day used from the 21st day
   through the 100th day in a Medicare benefit period for post-hospital
   skilled nursing facility care eligible under Medicare Part A until the
   out-of-pocket limitation met as described in subparagraph 10 of this
   paragraph;
6. Hospice care coverage for fifty (50) percent of cost sharing
   for all Part A Medicare eligible expenses and respite care until the
   out-of-pocket limitation is met as described in subparagraph 10 of this
   paragraph;
7. Coverage for fifty (50) percent, under Medicare Part A or B, of
   the reasonable cost of the first three (3) parts of (or
   equivalent quantities of) packed red blood cells, as defined under
   federal regulations) unless replaced in accordance with federal
   regulations until the out-of-pocket limitation is met as described in
   subparagraph 10 of this paragraph;
8. Except for coverage provided in subparagraph (1) of this
   paragraph, coverage for fifty (50) percent of cost sharing otherwise
   applicable under Medicare Part B after the policyholder pays the
   Part B deductible until the out-of-pocket limitation is met as de-
   scribed in subparagraph 10 of this paragraph;
9. Coverage of 100% of the cost sharing for Medicare Part B
   preventive services after the policyholder pays the Part B deduct-
   ible and
10. Coverage of 100% of all cost sharing under Medicare Parts
   A and B for the balance of the calendar year after the individual
   has reached the out-of-pocket limitation on annual expenditures
   under Medicare Parts A and B of $4,000 in 2006, indexed each
   year by the appropriate inflation adjustment specified by the sec-
   retary.

(b) Standardized Medicare supplement benefit plan L shall
consist of the following:
1. Coverage of 100% of the Part A hospital inpatient care cost for
each day used from the 61st through the 90th day in any Medicare benefit period;
2. Coverage of 100% of the Part A hospital inpatient care cost for
each Medicare lifetime inpatient reserve day used from
   the 91st through the 150th day in any Medicare benefit period;
3. Upon exhaustion of the Medicare hospital inpatient coverage,
   including the lifetime reserve days, coverage of 100% of the
   Medicare Part A eligible expenses for hospitalization paid at the
   applicable prospective payment system rate, or other appropriate
   Medicare standard of payment, subject to a lifetime maximum
   benefit or an additional 365 days. The provider shall accept the
   issuer's payment as payment in full and shall not bill the insured for
   any balance;
4. Coverage for seventy-five (75) percent of the Medicare Part A
   inpatient hospital deductible amount per benefit period until the
   out-of-pocket limitation is met as described in subparagraph 10 of this
   paragraph;
5. Skilled nursing facility care coverage for seventy-five (75)
   percent of the coverage amount for each day used from the
   twenty-first (21) day through the 100th day in a Medicare benefit
   period for post-hospital skilled nursing facility care eligible under
   Medicare Part A until the out-of-pocket limitation is met as de-
   scribed in subparagraph 10 of this paragraph;
6. Hospice care coverage for seventy-five (75) percent of cost
   sharing for all Part A Medicare eligible expenses and respite care
   until the out-of-pocket limitation is met as described in subpara-
   graph 10 of this paragraph;
7. Coverage for seventy-five (75) percent, under Medicare Part
A or B, of the reasonable cost of the first three (3) parts of (or
   equivalent quantities of) packed red blood cells, as defined under
   federal regulations) unless replaced in accordance with federal
   regulations until the out-of-pocket limitation is met as described in
   subparagraph 10 of this paragraph;
8. Except for coverage provided in subparagraph (1) of this
   paragraph, coverage for seventy-five (75) percent of cost sharing otherwise
   applicable under Medicare Part B after the policyholder pays the Part B deductible
   until the out-of-pocket limitation is met as described in subparagraph 10 of this
   paragraph;
9. Coverage of 100% of the cost sharing for Medicare Part B
   preventive services after the policyholder pays the Part B deduct-
   ible and
10. Coverage of 100% of all cost sharing under Medicare Parts
   A and B for the balance of the calendar year after the individual
   has reached the out-of-pocket limitation on annual expenditures
   under Medicare Parts A and B of $2,000 in 2006, indexed each
   year by the appropriate inflation adjustment specified by the sec-
   retary.

Section 8. Medicare Select Policies and Certificates. (1) A
policy or certificate shall not be advertised as a Medicare Select
policy or certificate unless it meets the requirements of this section.

(a) The executive director (or designee) may authorize an
issuer to offer a Medicare Select policy or certificate, pursuant to
this section and 42 U.S.C. 1395s, if the executive director (or-

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misceann) finds that the issuer has satisfied all of the requirements of this administrative regulation.

(3) A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the executive director [commissioner].

(4) A Medicare Select issuer shall file a proposed plan of operation with the executive director [commissioner]. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation, and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

a. To deliver adequately all services that are subject to a restricted network provision, or

b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This paragraph shall not apply to supplemental charges or cost sharing amounts as stated in the Medicare Select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention, and removal of network providers; and

3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action if warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the issuer to comply with subsection (9) of this section.

(g) If any information submitted to meet a requirement of paragraphs (a) through (f) of this subsection is unclear, additional information to clarify the submitted information may be [Any other information requested by the executive director [commissioner].]

5(a) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the executive director [commissioner] prior to implementing any changes. Any changes shall be considered approved by the executive director [commissioner] thirty (30) days after filing unless specifically disapproved by the executive director [commissioner].

(b) An updated list of network providers shall be filed with the executive director [commissioner] at least quarterly.

(c) A Medicare Select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

1. The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition; and

2. It is not reasonable to obtain these services through a network provider.

(d) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(e) A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

1. Other Medicare supplement policies or certificates offered by the issuer; and

2. Other Medicare Select policies or certificates.

(b) A description (including address, phone number, and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers.

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles if providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred if using out-of-network providers shall [not at] not count toward the out-of-pocket annual limit contained in Medicare plans K and L.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(g) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

9 Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to subsection (9) of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

10 A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. These procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

2 (a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) When the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(c) A grievance shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The issuer shall not report any later than each March 31st to the executive director [commissioner] regarding its grievance procedures, including the number of grievances filed in the past year and a summary of the subject, nature, and resolution of such grievances.

(11) When the insured makes the initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

12 (a) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make these policies or certificates available without requiring evidence of insurability after the Medicare supplement policy or certificate has been in force for six (6) months.

(b) For the purpose of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following that is not included in the Medicare Select policy or certificate being replaced:

1. The Medicare Part A deductible;

2. [Coverage for prescription drugs];
3. [4.] Coverage for Part B excess charges.
(13) Medicare Select policies and certificates shall provide for continuation of coverage if the secretary determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.
(a) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplemental policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make these policies and certificates available without requiring evidence of insurability.
(b) For the purposes of this subsection, a Medicare supplemental policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following not included in the Medicare Select policy or certificate being replaced:
1. The Medicare Part A deductible;
2. [Coverage for prescription drugs];
3. [Coverage for at-home recovery services]; or
4. [Coverage for Part B excess charges].
(14) A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

(a) Medicare supplement policies and certificates shall include a renewal or continuation provision:
1. The language or specifications of a renewal or continuation provision shall be consistent with the type of insurance policy issued; and
2. The provision shall:
   a. Be clearly and legibly printed in a reasonable size;
   b. Appear on the first page of the policy; and
   c. Include any:
      (i) Reservation by the issuer of the right to change premiums; and
      (ii) Automatic renewal premium increases on the insured’s age.
(b) A rider or endorsement added to a Medicare supplement policy after the date of issuance or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured except for a rider or endorsement:
1. By which an Insurer effectuates a written request by an insured;
2. By which an insurer exercises a specifically-reserved right under a Medicare supplement policy; or
3. By which an insurer is required to reduce or eliminate benefits to avoid duplication of Medicare benefits.
(c) After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless:
1. The benefits are required by the minimum standards for Medicare supplement policies;
2. The increased benefits or coverage is required by law.
(d) If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.
(e) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import.
(f) If a Medicare supplemental policy or certificate contains any limitations with respect to preexisting conditions, these limitations shall appear as a separate paragraph of the policy and be labeled as "preexisting condition limitations".
(g) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached thereto, stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within at least thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured is not satisfied for any reason.
(h) Issuers of insurance policies and certificates covering accident and sickness and hospital or medical expenses on an expense incurred or indemnity basis to persons eligible for Medicare also shall provide to these applicants a "Guide to Health Insurance for People with Medicare" in the language, format, type size, type proportional spacing, bold character, and line spacing developed jointly by the National Association of Insurance Commissioners and the Centers for Medicare and Medicaid Services [Healthcare Financial Administration] and in a type size no smaller than twelve (12) point type.
2. Delivery of the guide shall be made whether or not the policies or certificates are advertised, solicited, or issued as Medicare supplement policies or certificates as defined in this administrative regulation; and
3. Delivery of the guide shall be made to the applicant at the time of application and acknowledgment of receipt of the guide shall be obtained by the issuer, except that direct response issuers shall deliver the guide to the applicant upon request, but not later than the time the policy is delivered.
(2) Notice requirements.
(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its insureds of modifications it has made to Medicare supplement policies or certificates. The notice shall:
1. Include a description of revisions to the Medicare Program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or certificate; and
2. Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.
(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms to facilitate comprehension.
(c) The notices shall not contain or be accompanied by any solicitation.
(3) Notices issued shall comply with the requirements of this subsection and any additional notice requirements pursuant to 42 U.S.C. 1395w-101-1395w-152.
(3) Outline of coverage requirements for Medicare supplement policies.
(a) Issuers shall provide an outline of coverage to all applicants when application is presented to the prospective applicant and, except for direct response issuers, shall obtain an acknowledgment of receipt of the outline from the applicant.
(b) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is modified in a way which would result in a modification of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the [such] policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type immediately above the issuer's name:
NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED.*
(c) The outline of coverage provided to applicants pursuant to this subsection consists of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in HIPMC-MS-21 (07/05) and [below] in no less than twelve (12) point type. All Plans A through L (J) shall be shown on the cover page, and any plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.
(d) The following items shall be included in the outline of coverage in the order prescribed below:
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Outline of Medicare Supplement Coverage—Cover Page

Benefit Plan(s) (Insert letter(s) of plan(s) being offered)

Medicare supplement insurance shall be sold only in ten (10) standard plans and two (2) high-deductible plans. This chart shows the benefits included in each plan. Every company must make available Plan "A." Some plans may not be available in your state.

BASIC BENEFITS: Included in all plans:

<table>
<thead>
<tr>
<th>Plan</th>
<th>Basic Benefits</th>
<th>Plan</th>
<th>Basic Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part A</td>
<td>Deductible</td>
<td>Part A</td>
<td>Deductible</td>
</tr>
<tr>
<td>Part B</td>
<td>Deductible</td>
<td>Part B</td>
<td>Deductible</td>
</tr>
<tr>
<td>Foreign Travel Emergency</td>
<td>At-home Recovery</td>
<td>Foreign Travel Emergency</td>
<td>At-home Recovery</td>
</tr>
<tr>
<td>Preventive Care</td>
<td>Preventive Care</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Plans F and J also have an option called a high-deductible Plan F and a high-deductible Plan J. These high-deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year $1500 deductible. Benefits from high-deductible Plans F and J will not begin until out-of-pocket expenses are $1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but does not include, in Plan J, the Plan's separate prescription drug deductible or, in Plan F, the Plan's separate foreign travel emergency deductible.

1. PREMIUM INFORMATION (Boldface-Style)

We (insert issuer's name) can only raise your premium if we raise the premiums for all policies like yours in this state—(if the premium is based on the increasing age of the insured, include information specifying when premiums will change).

2. DISCLOSURES (Boldface-Type)

Use this outline to compare benefits and premiums among policies.

3. READ YOUR POLICY VERY CAREFULLY (Boldface-Type)

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

4. RIGHT-TO-RETURN POLICY (Boldface-Type)

If you find that you are not satisfied with your policy, you may return it to (insert issuer's address). If you send the policy back to us within thirty (30) days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

5. POLICY REPLACEMENT (Boldface-Type)

If you are replacing another health insurance policy, do not cancel it until you have actually received your new policy and are sure you want to keep it.

6. NOTICE (Boldface-Type)

This policy may not fully cover all of your medical costs:

a. (for agents)

Neither (insert insured's name) nor its agents are connected with Medicare.

b. (for direct response insurers)

(insert insured's name) is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult "Medicare & You" for more details.

7. COMPLETE ANSWERS ARE VERY IMPORTANT (Boldface-Type)

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Review the application carefully before you sign it. Be certain that all information has been recorded properly.

Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments, and

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Inclusion of payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. More than four (4) plans shall be shown on one (1) chart. For purposes of illustration, charts for each plan are included in the administrative regulation. An issuer may use additional benefit-plan designations on these charts pursuant to Section 7(1) of this administrative regulation.

*(include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner)*

<table>
<thead>
<tr>
<th>PLAN A</th>
<th>MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>SERVICES</td>
<td>MEDICARE-PAYS</td>
</tr>
<tr>
<td>HOSPITALIZATION</td>
<td></td>
</tr>
<tr>
<td>Compartment room and board, general nursing and miscellaneous services and supplies</td>
<td>First 60 days</td>
</tr>
<tr>
<td></td>
<td>61st thru 90th day</td>
</tr>
<tr>
<td></td>
<td>91st day and after</td>
</tr>
<tr>
<td></td>
<td>While using 60 lifetime reserve days</td>
</tr>
<tr>
<td></td>
<td>Once lifetime reserve days are used</td>
</tr>
<tr>
<td></td>
<td>Additional 365 days</td>
</tr>
<tr>
<td></td>
<td>Beyond the additional 365 days</td>
</tr>
</tbody>
</table>

| SKILLED NURSING FACILITY CARE 
| You must meet Medicare’s requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital | |
| SERVICES | MEDICARE-PAYS | PLAN-PAYS | YOU PAY |
| First 60 days | All approved amounts | $0 | $0 |
| 61st thru 100th day | All but $90 a-day | $0 | Up to $90 a-day |
| 101st day and after | All-costs | $0 | All-costs |

| BLOOD | |
| First 3 pints | $0 | 3 pints | $0 |
| Additional amounts | 100% | $0 | $0 |

| HOSPICE CARE | All but very limited-equivalence for out-patient drugs and equipment | $0 | Balance |

<table>
<thead>
<tr>
<th>PLAN A</th>
<th>MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>SERVICES</td>
<td>MEDICARE-PAYS</td>
</tr>
<tr>
<td>MEDICAL EXPENSES – IN OR OUT OF HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician’s services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,</td>
<td>First $100 of Medicare-approved amounts</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Remainder of Medicare-approved amounts</td>
</tr>
<tr>
<td></td>
<td>Part A excess charges (above Medicare-approved amount)</td>
</tr>
</tbody>
</table>

| BLOOD | |
| First 3 pints | | All-costs | $0 |
| Next $100 of Medicare-approved amounts | | $0 | $100 (Part B-deductible) |
| Remainder of Medicare-approved amounts | | 20% | $0 |

| CLINICAL LABORATORY SERVICES | |
| Tests for Diagnostic Services | 100% | $0 | $0 |

| PART A & B | HOME HEALTH CARE |

| MEDICARE-COVERED SERVICES | |
| Medically necessary — skilled care services and medical supplies | | 100% | $0 |
| Durable medical equipment | First $100 of Medicare-approved amounts | 20% | $0 |
| | | | $100 (Part B-deductible) |
| | Remainder of Medicare-approved amounts | 20% | $0 |

<table>
<thead>
<tr>
<th>PLAN B</th>
<th>MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>SERVICES</td>
<td>MEDICARE-PAYS</td>
</tr>
<tr>
<td>HOSPITALIZATION</td>
<td></td>
</tr>
<tr>
<td>Compartment room and board, general nursing and miscellaneous services and supplies</td>
<td>First 60 days</td>
</tr>
<tr>
<td></td>
<td>61st thru 90th day</td>
</tr>
<tr>
<td></td>
<td>91st day and after</td>
</tr>
<tr>
<td></td>
<td>While using 60 lifetime reserve days</td>
</tr>
<tr>
<td></td>
<td>Once lifetime reserve days are used</td>
</tr>
<tr>
<td></td>
<td>Additional 365 days</td>
</tr>
<tr>
<td></td>
<td>Beyond the additional 365 days</td>
</tr>
</tbody>
</table>

| SKILLED NURSING FACILITY CARE | You must meet Medicare’s requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital | |
| SERVICES | MEDICARE-PAYS | PLAN-PAYS | YOU PAY |
| First 60 days | All approved amount | $0 | $0 |
| 61st thru 100th day | All but $90 a-day | $0 | Up to $90 a-day |
| 101st day and after | All-costs | $0 | All-costs |
### VOLUME 32, NUMBER 4 – October 1, 2005

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HOSPICE CARE</strong></td>
<td>Additional amounts</td>
<td>100%</td>
<td>$0</td>
</tr>
<tr>
<td>Available as long as your doctor certifies you are terminally ill and you elect to receive these services.</td>
<td>All-but-very-limited out-of-pocket expenses</td>
<td>$0</td>
<td>Balance</td>
</tr>
</tbody>
</table>

#### PLAN B
**MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR**

**MEDICAL EXPENSES IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, SUCH AS PHYSICIAN’S SERVICES, INPATIENT AND OUTPATIENT MEDICAL AND SURGICAL SERVICES AND SUPPLIES, PHYSICAL AND SPEECH THERAPY, DIAGNOSTIC TESTS, DURABLE MEDICAL EQUIPMENT, ***FIRST $100 of Medicare-approved amounts***

<table>
<thead>
<tr>
<th>Medicare-approved amounts</th>
<th>Medicare PAYS</th>
<th>Plan Pays</th>
<th>You Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $100 of Medicare-approved amounts</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Medicare-approved amounts</td>
<td>Generally 80%</td>
<td>Generally 20%</td>
<td>$0</td>
</tr>
<tr>
<td>Part B excess charges (above Medicare-approved amounts)</td>
<td>$0</td>
<td>$0</td>
<td>All-costs</td>
</tr>
</tbody>
</table>

**BLOOD**

<table>
<thead>
<tr>
<th>Medicare-approved amounts</th>
<th>Medicare PAYS</th>
<th>Plan Pays</th>
<th>You Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $100 of Medicare-approved amounts</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Medicare-approved amounts</td>
<td>50%</td>
<td>50%</td>
<td>$0</td>
</tr>
<tr>
<td><strong>CLINICAL LABORATORY SERVICES – BLOOD TESTS FOR DIAGNOSTIC SERVICES</strong></td>
<td>$100</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

#### PARTS A & B

**HOME HEALTH CARE MEDICARE APPROVED SERVICES**

<table>
<thead>
<tr>
<th>Services</th>
<th>Medicare PAYS</th>
<th>Plan Pays</th>
<th>You Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medically necessary skilled care services and medical supplies</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Durable medical equipment</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td><strong>First $100 of Medicare-approved amounts</strong></td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td><strong>Remainder of Medicare-approved amounts</strong></td>
<td>20%</td>
<td>20%</td>
<td>$0</td>
</tr>
</tbody>
</table>

#### PLAN C
**MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD**

**HOSPITALIZATION**

<table>
<thead>
<tr>
<th>Services</th>
<th>Medicare PAYS</th>
<th>Plan Pays</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>65 days</td>
<td>$720 (Part A deductible)</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>61st thru 90th day</td>
<td>All but $120 a day</td>
<td>$120 a day</td>
<td>$0</td>
</tr>
<tr>
<td>91st day and after</td>
<td>All but $150 a day</td>
<td>$150 a day</td>
<td>$0</td>
</tr>
<tr>
<td>While using 50 More Outpatient Days</td>
<td>All but $200 a day</td>
<td>$200 a day</td>
<td>$0</td>
</tr>
<tr>
<td>Once inpatient days are used:</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Before the additional 365 days</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Beyond the additional 365 days</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

#### SKILLED NURSING FACILITY CARE

You must meet Medicare’s requirements, including having been in a hospital for at least 3 days and enrolled a Medicare-approved facility within 30 days of leaving the hospital.

<table>
<thead>
<tr>
<th>Services</th>
<th>Medicare PAYS</th>
<th>Plan Pays</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 20 days</td>
<td>All-allowed amounts</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>21st thru 100th day</td>
<td>All but $120 a day</td>
<td>Up to $120 a day</td>
<td>$0</td>
</tr>
<tr>
<td>101st day and after</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

**BLOOD**

<table>
<thead>
<tr>
<th>Medicare-approved amounts</th>
<th>Medicare PAYS</th>
<th>Plan Pays</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $100 of Medicare-approved amounts</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Medicare-approved amounts</td>
<td>50%</td>
<td>50%</td>
<td>$0</td>
</tr>
<tr>
<td><strong>CLINICAL LABORATORY SERVICES – BLOOD TESTS FOR DIAGNOSTIC SERVICES</strong></td>
<td>$100</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

#### PARTS A & B

**HOME HEALTH CARE MEDICARE APPROVED SERVICES**

<table>
<thead>
<tr>
<th>Services</th>
<th>Medicare PAYS</th>
<th>Plan Pays</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medically necessary skilled care services and medical supplies</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Plan C</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Durable medical equipment</strong></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts*</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
</tr>
<tr>
<td><strong>MEDICARE PAYS</strong></td>
</tr>
<tr>
<td>$0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Foreign travel not covered by Medicare</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA</td>
</tr>
<tr>
<td>First $250 each calendar year</td>
</tr>
<tr>
<td>Remainder of charges</td>
</tr>
<tr>
<td><strong>MEDICARE PAYS</strong></td>
</tr>
<tr>
<td>$0</td>
</tr>
</tbody>
</table>

**Plan D**

**Medicare (Part A) - Hospital services - per benefit period**

*A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

### HOSPITALIZATION

- **Semiprivate room and board, general nursing and miscellaneous services and supplies**
  - First 60 days: All but $700
  - 61st through 90th day: All but $105 a day
  - 91st day and after: All but $395 a day
- **Annual lifetime reserve days are used**
  - Additional 365 days: $0
  - 400% of - Medicare-eligible expenses
  - Beyond the additional 365 days: $0

### Skilled Nursing Facility Care

- **You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital**
- First 20 days: All approved amounts
- 21st through 100th day: All but $100 a day
- 101st day and after: All approved amounts

### Blood

- First 3 pints: $0
- Additional amounts: 100%
- **YOU PAY** | $0

### Hospice Care

- Available as long as your doctor certifies you are terminally ill and you elect to receive these services
- **YOU PAY** | $0

### Plan D - Medicare (Part B) - Medical Services - per calendar year

*A once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

### Medicare PAYS | Plan Pays | YOU PAY

<table>
<thead>
<tr>
<th>MEDICAL EXPENSES, IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, SUCH AS PHYSICIAN SERVICES, INPATIENT AND OUTPATIENT MEDICAL AND SURGICAL SERVICES AND SUPPLIES, PHYSICAL THERAPY, DIAGNOSTIC TESTS, DURABLE MEDICAL EQUIPMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $100 of Medicare-approved amounts</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
</tr>
</tbody>
</table>

### Blood

- First 3 pints: $0
- **YOU PAY** | $0
- Next $100 of Medicare-approved amounts | $0 | $0 | $100 (Part B deductible) |
- Remainder of Medicare-approved amounts | 80% | 20% | $0 |

### Clinical Laboratory Services - Blood Tests for Diagnostic Services

- 100%
- **YOU PAY** | $0

### Parts A & B

- **Home Health Care Medicare Approved Services**
  - Medically necessary skilled care services and medical supplies: 100%
  - **YOU PAY** | $0

### Durable medical equipment

- First $100 of Medicare-approved amounts | $0 | $0 | $100 (Part B deductible) |
- Remainder of Medicare-approved amounts | 80% | 20% | $0 |

### At-home Recovery Services - not covered by Medicare

- **YOU PAY** | $1,500

### Foreign Travel - not covered by Medicare

- Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA
- First $250 each calendar year: $0
- **YOU PAY** | $250

| *A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HOSPITALIZATION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Somm数十の room and board, general nursing and miscellaneous services and supplies</td>
<td>All but $7,003</td>
<td>$7,002 (Part A deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>$1st thru 90th day</td>
<td>All but $188 a day</td>
<td>$188 a day</td>
<td>$0</td>
</tr>
<tr>
<td>$91st thru 180th day and after</td>
<td>All but $306 a day</td>
<td>$306 a day</td>
<td>$0</td>
</tr>
<tr>
<td>One 180th to 365th day and after</td>
<td>All but $306 a day</td>
<td>$306 a day</td>
<td>$0</td>
</tr>
<tr>
<td>- Additional 365 days</td>
<td></td>
<td>- Additional 365 days</td>
<td>$0</td>
</tr>
<tr>
<td>- Beyond the additional 365 days</td>
<td></td>
<td>- Beyond the additional 365 days</td>
<td>$0</td>
</tr>
</tbody>
</table>

**SKILLED NURSING FACILITY CARE**

You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital.

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BLOOD</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First 2 pints</td>
<td>All-covered amounts</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Second thru 100th day and after</td>
<td>All but $89 a day</td>
<td>$89 a day</td>
<td>$0</td>
</tr>
<tr>
<td>101st thru 200th day and after</td>
<td>$0</td>
<td>$0</td>
<td>All-costs</td>
</tr>
</tbody>
</table>

**HOME HEALTH CARE MEDICARE APPROVED SERVICES**

Medically necessary, skilled care services and medical supplies.

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**PREVENTIVE MEDICAL CARE BENEFIT NOT COVERED BY MEDICARE**

Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare.

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**HOSPITALIZATION**

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE PAYS</th>
<th>PLAN PAYS</th>
<th>YOU PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Medicare Plan F: Inpatient Hospital Services - Per Calendar Year

**Medicare Pays**

<table>
<thead>
<tr>
<th>Services</th>
<th>Medicare Pays</th>
<th>After You Pay $1,500</th>
<th>In Addition To $1,500 Deductible</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical expenses</td>
<td>Medicare</td>
<td>Deductible</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Outpatient treatment</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital stays for the first 60 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital stays for the next 90 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital stays for the next 365 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital stays for any additional days</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital room and board</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital nursing and miscellaneous services</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Skilled nursing facility care</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospice care</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital.**

### Medicare Plan G: Inpatient Hospital Services - Per Benefit Period

**Medicare Pays**

<table>
<thead>
<tr>
<th>Services</th>
<th>Medicare Pays</th>
<th>You Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical expenses</td>
<td>Medicare</td>
<td>Deductible</td>
</tr>
<tr>
<td></td>
<td>Outpatient treatment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital stays for the first 60 days</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital stays for the next 90 days</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital stays for the next 365 days</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital stays for any additional days</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital room and board</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospital nursing and miscellaneous services</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Skilled nursing facility care</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hospice care</td>
<td></td>
</tr>
</tbody>
</table>

**You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital.**
## VOLUME 32, NUMBER 4 – October 1, 2005

### PART A & B

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE-PAYS</th>
<th>PLAN-PAYS</th>
<th>YOU-PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HOME HEALTH CARE MEDICARE-APPROVED SERVICES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medically-necessary skilled care services and medical supplies</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Durable medical equipment</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td><strong>MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, SUCH AS PHYSICIAN’S SERVICES, INPATIENT AND OUTPATIENT MEDICAL AND SURGICAL SERVICES AND SUPPLIES, PHYSICAL AND SPEECH THERAPY, DIAGNOSTIC TESTS, DURABLE MEDICAL EQUIPMENT</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>20%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td><strong>CLINICAL, LABORATORY, SERVICES, BLOOD TESTS FOR DIAGNOSTIC SERVICES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>100%</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
</tbody>
</table>

### PLAN 1: OTHER BENEFITS NOT COVERED BY MEDICARE

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE-PAYS</th>
<th>PLAN-PAYS</th>
<th>YOU-PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medically-necessary emergency care services beginning during the first 60 days of each trip outside the USA</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td><strong>BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $200 each calendar year</td>
<td>$0</td>
<td>$0</td>
<td>$200</td>
</tr>
<tr>
<td>Remainder of charges</td>
<td>60% to a lifetime maximum benefit of $60,000</td>
<td>20% and amounts over the $60,000 lifetime maximum</td>
<td></td>
</tr>
</tbody>
</table>

### PLAN 1: MEDICARE (PART A) – HOSPITAL SERVICES PER BENEFIT PERIOD

**A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE-PAYS</th>
<th>PLAN-PAYS</th>
<th>YOU-PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HOSPITALIZATION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Semi-private room and board, general nursing and miscellaneous services and supplies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First 60 days</td>
<td>All but $700</td>
<td>$700 (Part A deductible)</td>
<td>$0</td>
</tr>
<tr>
<td>61st thru 365th day</td>
<td>All but $150 a day</td>
<td>$150 a day</td>
<td>$0</td>
</tr>
<tr>
<td>0.5 day or after</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>While using 60 lifetime reserve days</td>
<td>All but $200 a day</td>
<td>$200 a day</td>
<td>$0</td>
</tr>
<tr>
<td>Once lifetime reserve days are used</td>
<td>All but $200 a day</td>
<td>$200 a day</td>
<td>$0</td>
</tr>
<tr>
<td>Additional 366 days</td>
<td>100% of Medicare-eligible expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beyond the additional 366 days</td>
<td>100%</td>
<td>All others</td>
<td>$0</td>
</tr>
</tbody>
</table>

### PLAN 1: MEDICARE (PART B) – MEDICAL SERVICES PER CALENDAR YEAR

**Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.**

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE-PAYS</th>
<th>PLAN-PAYS</th>
<th>YOU-PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, SUCH AS PHYSICIAN’S SERVICES, INPATIENT AND OUTPATIENT MEDICAL AND SURGICAL SERVICES AND SUPPLIES, PHYSICAL AND SPEECH THERAPY, DIAGNOSTIC TESTS, DURABLE MEDICAL EQUIPMENT</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>20%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td><strong>CLINICAL, LABORATORY, SERVICES, BLOOD TESTS FOR DIAGNOSTIC SERVICES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>100%</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
</tbody>
</table>

### PARTS A & B

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MEDICARE-PAYS</th>
<th>PLAN-PAYS</th>
<th>YOU-PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HOME HEALTH CARE MEDICARE-APPROVED SERVICES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medically-necessary skilled care services and medical supplies</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Durable medical equipment</td>
<td>100%</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td><strong>HOME HEALTH CARE MEDICARE-APPROVED SERVICES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medically-necessary skilled care services and medical supplies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Durable medical equipment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First $100 of Medicare-approved amounts</td>
<td>$0</td>
<td>$0</td>
<td>$100 (Part B deductible)</td>
</tr>
<tr>
<td>Remainder of Medicare-approved amounts</td>
<td>20%</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

**AT HOME RECOVERY SERVICES NOT COVERED BY MEDICARE**

Home care certified by your doctor, for personal care during recovery from an injury or illness for which Medicare-approved a home-care treatment plan.

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- 647 -
<table>
<thead>
<tr>
<th>VOLUME 32, NUMBER 4 – October 1, 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SERVICES</strong></td>
</tr>
<tr>
<td><strong>MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD</strong></td>
</tr>
<tr>
<td><strong>1. SERVICES</strong></td>
</tr>
<tr>
<td><strong>2. SERVICES</strong></td>
</tr>
<tr>
<td><strong>HOSPITALIZATION</strong></td>
</tr>
<tr>
<td><strong>A. Skilled Nursing Facility Care</strong></td>
</tr>
<tr>
<td><strong>B. Hospice Care</strong></td>
</tr>
<tr>
<td><strong>C. Medical Expenses – In or Out of the Hospital and Outpatient Hospital Treatment</strong></td>
</tr>
<tr>
<td><strong>D. Home Health Care – Medicare Approved Services</strong></td>
</tr>
<tr>
<td><strong>E. Home Recovery Services – Not Covered by Medicare</strong></td>
</tr>
</tbody>
</table>

---

**Benefit for each visit** | $0 | Actual charges to $40 a visit | **Balance** |
**Number of visits covered (must be received within 8-weeks of last Medicare-approved visit)** | $0 | Up to the $ of Medicare-approved visits, not to exceed 7 each week | **Balance** |
**Calendar-year maximum** | $0 | **$1,600** |

**OTHER BENEFITS – NOT COVERED BY MEDICARE** | | | **YOU PAY** |

**FOREIGN TRAVEL – NOT COVERED BY MEDICARE** | | | **YOU PAY** |

Medically necessary emergency care services beginning during the last 60 days of each trip outside the USA |
**First $250 each calendar year** | $0 | **$250** |
**Remaining charges** | $0 | 80% to a lifetime maximum benefit of $50,000 | **Balance** |

**BASIC OUTPATIENT PRESCRIPTION DRUGS – NOT COVERED BY MEDICARE** | | | **YOU PAY** |

**First $250 each calendar year** | $0 | **$250** |
**Next $2,500 each calendar year** | $0 | 50% of $2,500 calendar year maximum benefit | **You Pay** |
**Over $2,500 each calendar year** | $0 | All-excess |

**PLAN J**

**SERVICES** | **MEDICARE-PAYS** | **AFTER-YOU-PAY $1630** | **MEDICARE-PAYS** | **AFTER-YOU-PAY $1630** |
**DEDUCTIBLE** | **YOU PAY** |

**SKILLED NURSING FACILITY CARE** |

You must meet Medicare’s requirements, including having been in a hospital for at least 3 days, and entered a Medicare-approved facility within 30 days after leaving the hospital |
**First 20 days** | All but $200 | All but $200 | **$200** |
**21st thru 100th day** | All but $100 a day | Up to 60th day | **$100** |
**101st day and after** | $0 | 50% | **$50** |

**BLOOD** |

**First 3 pints** | $0 | 50% | **$50** |
**3rd pint** | $0 | 100% | **$100** |

**BLOOD** |

**First 3 pints** | $0 | All-excess | **$300** |
**Next 100 of Medicare-approved amount** | $0 | 50% | **$50** |
**Remainder of Medicare-approved amount** | 50% | 50% | **$50** |

**MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL – OUTPATIENT HOSPITAL TREATMENT; DURABLE MEDICAL EQUIPMENT** |

**FIRST $100 OF MEDICARE-APPROVED AMOUNT** | **$100** | **$100** | **$100** |
**SECOND $5,000 OF MEDICARE-APPROVED AMOUNT** | **$5,000** | **$5,000** | **$5,000** |
**DURABLE MEDICAL EQUIPMENT** | | | **Balance** |
| **FIRST $100 OF MEDICARE-APPROVED AMOUNT** | **$100** | **$100** | **$100** |
**SECOND $5,000 OF MEDICARE-APPROVED AMOUNT** | **$5,000** | **$5,000** | **$5,000** |

**TESTS FOR DIAGNOSTIC SERVICES** |

**FIRST $100 OF MEDICARE-APPROVED AMOUNT** | **$100** | **$100** | **$100** |
**SECOND $5,000 OF MEDICARE-APPROVED AMOUNT** | **$5,000** | **$5,000** | **$5,000** |

**HOME HEALTH CARE – MEDICARE APPROVED SERVICES** |

**Modestly necessary, skilled, home services and medical equipment** | 400% | | **$3** |
| **DURABLE MEDICAL EQUIPMENT** | | | **Balance** |
| **FIRST $100 OF MEDICARE-APPROVED AMOUNT** | **$100** | **$100** | **$100** |
| **SECOND $5,000 OF MEDICARE-APPROVED AMOUNT** | **$5,000** | **$5,000** | **$5,000** |

**HOME RECOVERY SERVICES – NOT COVERED BY MEDICARE** |

**Benefit for each visit** | $0 | Actual charges to $40 a visit | **Balance** |
**Number of visits covered (must be received within 8-weeks of last Medicare-approved visit)** | $0 | Up to the $ of Medicare-approved visits, not to exceed 7 each week | **Balance** |
(4) Notice regarding policies or certificates which are not Medicare supplement policies,

(a) Any accident or sickness insurance policy or certificate (other than a Medicare supplement policy), a policy issued pursuant to a contract under 42 U.S.C. 1395 et. seq., disability income policy, or other policy identified in Section 2(3) of this administrate regulation issued for delivery in Kentucky to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate.

(b) The notice shall:

1. Either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy; or
2. If no outline of coverage is delivered, printed on or attached to the first page of the policy or certificate delivered to insureds.

(c) The notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS POLICY OR CERTIFICATE IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the insurance company."

(d) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in paragraph (a) of this subsection shall disclose, using the applicable statement in Section 10 of this administrative regulation, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 10 Disclosure Statements. (1) 42 U.S.C. 1395ss(c)(3)A prohibits the sale of a health insurance policy (the term policy or policies includes certificates) that duplicate Medicare benefits unless it will pay benefits without regard to other health coverage and it includes the prescribed disclosure statement on or together with the application.

(2) A health insurance policy that duplicates Medicare shall include one (1) of the following disclosure statements, according to the particular policy type involved, on the application or together with the application:

(a) HIPMC-MS-4 (07/05) (3/04) shall be the original disclosure statement for a policy that provides benefits for expenses incurred for an accidental injury only;

(b) HIPMC-MS-5 (07/05) (3/04) shall be the original disclosure statement for a policy that provides benefits for specified limited services;

(c) HIPMC-MS-6 (07/05) (3/04) shall be the original disclosure statement for a policy that reimburses expenses incurred for a specified disease or other specified impairment. This includes expense incurred cancer, specified disease, and other types [type] of health insurance policies [policy] that limit [limits] reimbursement to named medical conditions;

(d) HIPMC-MS-7 (07/05) (3/04) shall be the original disclosure statement for a policy that pays fixed dollar amounts for a specified disease or other specified impairment. This includes cancer, specified disease, and other health insurance policies [policy] that pay [pay] a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy;

(e) HIPMC-MS-8 (07/05) (3/04) shall be the original disclosure statement for an indemnity policy and other policy that pay [pay] a fixed dollar amount per day, excluding a long-term care policy;

(f) HIPMC-MS-9 (07/05) (3/04) shall be the original disclosure statement for a policy that provides benefits for expenses incurred for an accidental injury only;

(g) HIPMC-MS-10 (07/05) (3/04) shall be the original disclosure statement for other health insurance policies not specifically identified in paragraphs (a) through (f) of this subsection;

(h) HIPMC-MS-11 (07/05) (3/04) shall be the alternative disclosure statement for a policy that provides benefits for expenses incurred for an accidental injury only;

(i) HIPMC-MS-12 (07/05) (3/04) shall be the alternative disclosure statement for a policy that provides benefits for specified limited services;

(j) HIPMC-MS-13 (07/05) (3/04) shall be the alternative disclosure statement for a policy that reimburses expenses incurred for a specified disease or other specified impairment. This includes expense incurred cancer, specified disease, and other types [type] of health insurance policies [policy] that limit [limits] reimbursement to named medical conditions;

(k) HIPMC-MS-14 (07/05) (3/04) shall be the alternative disclosure statement for a policy that pays fixed dollar amounts for a specified disease or other specified impairment. This includes cancer, specified disease, and other health insurance policies [policy] that pay [pay] a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy;

(l) HIPMC-MS-15 (07/05) (3/04) shall be the alternative disclosure statement for a policy that provides benefits for expenses incurred for an accidental injury only;

(m) HIPMC-MS-16 (07/05) (3/04) shall be the alternative disclosure statement for an indemnity policy and other policies [policy] that pay [pay] a fixed dollar amount per day, excluding a long-term care policy;

(n) HIPMC-MS-17 (07/05) (3/04) shall be the alternative disclosure statement for other health insurance policies not specifically identified in paragraphs (h) through (m) of this subsection.

A disclosure statement shall not vary from the incorporated statements in terms of language or format [type size, type proportional spacing, bold type character, line spacing, and usage of boxes around text].

(4) In accordance with 42 U.S.C. 1395 ss (3)(3)(A), an insurer shall be [is] prohibited from selling a Medicare supplement policy to a person who already has a Medicare supplement policy, except as a replacement.

(5) Property/casualty and life insurance policies shall [are] not be considered health insurance.

(6) Disability income policies shall [are] not be considered to provide benefits that duplicate Medicare.

(7) The federal law shall [does] not preempt state laws that are more stringent than the federal requirements.
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(3) The federal law shall [does not preempt existing state form filing requirements].

Section 11. With respect to changes made to this administrative regulation to comply with KRS 304.14-500 and 42 U.S.C. 1395w-101-1395w-152, which includes provisions effective January 1, 2006, an issuer may:

(1) Continue to use currently-approved forms, as appropriate, through December 31, 2006.

(2) Offer any authorized Medicare supplement plan upon approval by the executive director and

(3) Upon the effective date of this administrative regulation, file changes to forms with the executive director to comply with KRS 304.14-500, 42 U.S.C. 1395w-101-1395w-152, and this administrative regulation.

Section 12. Material Incorporated by Reference. (1) The following material is incorporated by reference.

(a) "HIPMC-MS-4 (3/01)";
(b) "HIPMC-MS-5 (07/05) [3/04]";
(c) "HIPMC-MS-6 (07/05) [3/04]";
(d) "HIPMC-MS-7 (07/05) [3/04]";
(e) "HIPMC-MS-8 (07/05) [3/04]";
(f) "HIPMC-MS-9 (07/05) [3/04]";
(g) "HIPMC-MS-10 (07/05) [3/04]";
(h) "HIPMC-MS-11 (07/05) [3/04]";
(i) "HIPMC-MS-12 (07/05) [3/04]";
(j) "HIPMC-MS-13 (07/05) [3/04]";
(k) "HIPMC-MS-14 (07/05) [3/04]";
(l) "HIPMC-MS-15 (07/05) [3/04]";
(m) "HIPMC-MS-16 (07/05) [3/04]"; [and]
(n) "HIPMC-MS-17 (07/05) [3/04]" and
(o) "HIPMC-MS-21 (07/05).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office 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 office's [department's] internet Web site at http://doi.prp.ky.gov (www.doi.state.ky.us).

LAJJANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director

APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 15, 2005 at 10 a.m.
CONTACT PERSON: Carrie Banshan, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, September 13, 2005)

806 KAR 17:400. Marketing and sales practices in Medicare supplement insurance policies.

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14.510, 304.2-350, 304.3-150
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director [Commissioner] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.14-510 authorizes the Executive Director [Commissioner] of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.2-250 authorizes the Executive Director [Commissioner] of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the Executive Director [Commissioner] of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This administrative regulation establishes minimum standards for marketing and sales practices in Medicare supplement insurance policies.

Section 1. Definitions. (1) "Applicant" is defined in KRS 304.14-500(1).

(2) "Bankruptcy" means a Medicare Advantage [±-Choice] organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in this state.

(3) "Certificate" is defined in KRS 304.14-500(2).

(4) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(5) "Commissioner" is defined in KRS 304.1-050(1).

(6) "Compensation" means pecuniary or nonpecuniary renumeration of any kind relating to the sale or renewal of the policy or certificate such as bonuses, gifts, prizes, awards, and finders' fees.

(7) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no break in coverage greater than sixty-three (63) days.

(8) "Creditable coverage" is defined in KRS 304.17A-005(8)(7).

(9) "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. 1002.

(10) "Executive director" means the Executive Director of the Office of Insurance.

(11) "Inolvency" means an insurer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

(12) "Insurer" means insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(13) "Medicare" is defined in KRS 304.14-500(4).

(14) "Medicare Advantage [±-Choice] plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), and includes the following:

(a) A coordinated care plan which provides health care services, including the following:

1. A health maintenance organization plan with or without a point-of-service option;
2. A plan offered by a provider-sponsored organization; and
3. A preferred provider organization plan;
(b) A medical savings account plan coupled with a contribution into a Medicare Advantage [±-Choice] medical savings account; and
(c) A Medicare Advantage [±-Choice] private fee-for-service plan.

(15) "Medicare Select policy" or "Medicare Select certificate" means respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(16) "Medicare supplement policy" is defined in KRS 304.14-500(3).

(17) "Office" means the Office of Insurance.

(18) "PACE" means a program for all-inclusive care for the elderly under 42 U.S.C. 1396.

(19) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(20) "Secretary" means the Secretary of the United States Department of Health and Human Services.

Section 2. Open Enrollment. (1) An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a Medicare supplement policy or certifi-
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cate, because of the health status, claims experience, receipt of health care, or medical condition of an applicant if:
(a) An application for a policy or certificate is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is sixty-five (65) years of age or older; and
(b) The applicant is enrolled for benefits under Medicare Part B.

(2) Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under subsection (1) of this section without regard to age.

(3)(a) If an applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition.
(b) If the applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the risk of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. Pursuant to 42 U.S.C. 1395ss(s)(2)(D)(ii), the secretary shall specify the manner of the reduction under this subsection.

(4) Except as provided in Sections 211(a), 3, and 12 [Section 42(4)] of this administrative regulation, this administrative regulation shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.


(a) Eligible persons shall be those individuals described in subsection (2) of this section who seek to enroll under the policy during the period specified in subsection (3) of this section, and who submit evidence of the date of termination, [or] disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an issuer shall not:
1. Deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (5) of this section that is offered and is available for issuance to new enrollees by the issuer;
2. Discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition;
3. Impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

(2) An eligible person shall include the following:

(a) An individual that is enrolled under an employee welfare benefit plan [that provides health benefits that supplement the benefits under Medicare] and the plan terminates, the plan ceases to provide all the benefits under Medicare, or the plan ceases to provide all the supplemental health benefits to the individual;
(b) An individual that is enrolled with a Medicare Advantage [+Choice] organization under a Medicare Advantage [+Choice] plan under Part C of Medicare and:
   1. The individual is sixty-five (65) years of age or older, is enrolled with a PACE provider under 42 U.S.C. 1396, and there are circumstances similar to those described in subparagraph 2 of this paragraph that would permit discontinuance of the Individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage [+Choice] plan; or
   2. Any of the following circumstances apply:
      a. The certification of the organization or plan under this part has been terminated;
      b. The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;
      c. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, pursuant to 42 U.S.C. 1395w-21(e)(4)(B), but not including termination of the individual's enrollment on the basis described in 42 U.S.C. 1395w-21(g)(3)(B) (if the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under 42 U.S.C. 1395w-28), or termination of the plan for all individuals within a residence area;
   d. The individual demonstrates, in accordance with the guidelines established by the secretary, that:
      i. The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards;
      ii. The organization, agent, or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or
      e. The individual meets other exceptional conditions as the secretary may provide.
   (c) An individual that is enrolled with any of the following:
      i. An eligible organization under a contract under 42 U.S.C. 1395mm regarding Medicare risk or cost;
      ii. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;
      iii. An organization under an agreement under 42 U.S.C. 1395(a)(1)(A) regarding the health care prepayment plan; or
      iv. An organization under a Medicare Select policy;
   2. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage pursuant to paragraph (b) of this subsection;
   (d) An individual that is enrolled under a Medicare supplement policy and the enrollment ceases due to any of the following reasons:
      1. The insolvency of the issuer or bankruptcy of the nonissuing organization;
      2. The involuntary termination of coverage or enrollment under the policy;
      3. The issuer, an agent, or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;
      4. An individual that was enrolled under a Medicare supplement policy who terminates enrollment and subsequently enrols, for the first time, with any of the following:
     a. A Medicare Advantage [+Choice] organization under a Medicare Advantage [+Choice] plan under Part C of Medicare;
     b. An eligible organization under a contract under 42 U.S.C. 1395mm regarding Medicare risk or cost;
     c. Any similar organization operating under demonstration project authority;
     d. Any PACE Program under 42 U.S.C. 1396;
     e. Any organization under agreement under 42 U.S.C. 1395(a)(1)(A) regarding health care prepayment plan; or
     f. A Medicare Select policy; and
   3. The subsequent enrollment under paragraph (e)1 of this subsection is terminated by the enrollee during any period within the first twelve (12) months of subsequent enrollment during which the enrollee is permitted to terminate the subsequent enrollment under 42 U.S.C. 1395w-21(e) of the Federal Social Security Act; or
   (f) An individual who, upon first becoming eligible for benefits under Part A of Medicare at age sixty-five (65), enrolls in:
     1. A Medicare Advantage [+Choice] plan under Part C of Medicare or with a PACE provider under 42 U.S.C. 1396; and
     2. disenrolls from the plan or program no later than twelve (12) months after the effective date of enrollment; or
     1. An individual that:
        1. Enrolls in a Medicare Part D plan during the initial enrollment period: [End]
        2. At the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs; and [the individual]
3. Terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D, along with the application for a policy described in subsection (2)(a) of this section. 
(3) Guaranteed issue term periods. 
(a) For an individual described in subsection (2)(a) of this section, the guaranteed issue period shall: 
1. Begin on the later of: 
   a. The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); and 
   b. The date that the applicable coverage terminates or ceases; and 
2. End sixty-three (63) days thereafter (after the date of the applicable notice); 
(b) For an individual described in subsection (2)(b), (c), (e), and (f) of this section whose enrollment is terminated involuntarily, the guaranteed issue period shall begin on the date that the individual receives a notice of termination and end sixty-three (63) days after the date the applicable coverage is terminated; 
(c) For an individual described in subsection (2)(d) of this section, the guaranteed issue period shall end on the date that is sixty (60) days before the effective date of the disenrollment and on the date that is sixty-three (63) days after the effective date, and 
(d) In the case of an individual described in subsection (2)(a) of this section, the guaranteed issue period shall begin on the date the individual receives notice pursuant to 42 U.S.C. 1395ss(v)(2)(B) [Section 1850(a)(2)(B) of the Social Security Act] from the Medicare supplement issuer during the sixty (60) day period immediately preceding the initial Part D enrollment period and shall end on the date that is sixty-three (63) days after the effective date of the individual’s coverage under Medicare Part D, and 
(e) For an individual described in subsection (2) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period shall begin on the date of disenrollment and end on the date that is sixty-three (63) days after the effective date. 
(4) Extended Medicare access for interrupted trial periods 
(a) For an individual described in subsection (2)(a) of this section whose enrollment with an organization or provider described in subsection (2)(e) of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (2)(e) of this section; 
(b) For an individual described in subsection (2)(f) of this section whose enrollment with a plan or an individual described in subsection (2)(f) of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an interviewing enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (2)(e) of this section; and 
(c) For purposes of subsection (2)(e) and (f) of this section, enrollment of an individual with an organization or provider described in subsection (2)(a) of this section or with a plan or in a program described in subsection (2)(f) of this section, shall not be deemed to be an initial enrollment under this paragraph after the two (2) year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program. 
(5) The Medicare supplement policy to which eligible persons are entitled shall be the following: 
(a) A person eligible pursuant to subsection (2)(a), (b), (c), or (d) of this section shall be entitled to a Medicare supplement policy which has a benefit package classified in 806 KAR 17:390, Section 7(5) as Plan A, B, C, (or) F (including F with a high deductible), K, or L offered by an issuer. 
(b) 1. Subject to subparagraph 2 of this paragraph a person eligible pursuant to subsection (2)(e) of this section shall be eligible to the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not available, a policy described in subsection (2)(a) or (e) of this section. 
2. After December 31, 2005, a person who was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit shall be entitled to a Medicare supplement policy, which is: 
   1. Available from the same issuer but modified to remove outpatient prescription drug coverage; or 
   2. At the election of the policyholder, an A, B, C, F (including F with a high deductible), K, or L policy that is offered by an issuer. 
(c) A person eligible pursuant to subsection (2)(f) of this section shall be entitled to any Medicare supplement policy offered by any issuer. 
(d) A person eligible pursuant to subsection (2)(a) of this section shall be entitled to a Medicare supplement policy, that: 
   1. Has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L; and 
   2. Is offered and available for issuance to new enrollees by the same issuer that issued the person’s Medicare supplement policy with outpatient prescription drug coverage. 
(6) Notification provisions. 
(a) When an event as described in subsection (2) of this section occurs, resulting in loss of coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection (1)(b) of this section. This notice shall be communicated concurrently with the notification of termination. 
(b) When an event described in subsection (2) of this section occurs, resulting in cessation of enrollment under a contract, agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection (1)(b) of this section. This notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment.

Section 4. Filing and Approval of Policies and Certificates and Premium Rates. (1) An issuer shall deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the executive director [commissioner] in accordance with filing requirements and procedures prescribed by KRS 304.14-120. 
(2) An issuer shall file, with the executive director, any riders or amendments to policy or certificate forms, issued in Kentucky, to delete a outpatient prescription drug benefit pursuant to 42 U.S.C. 1395SW-101-1395SW-152. 
(3) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the executive director [commissioner] in accordance with KRS 304.14-120. 
(4)(a) [94(e)] Except as provided in paragraph (b) of this subsection, an issuer shall not file for approval more than one (1) form of a policy or certificate which may be an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy, for each standard Medicare supplement benefit plan. 
(b) An issuer may offer, with the approval of the executive director [commissioner], up to four (4) additional policy forms or certificate forms which may be an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy, for the same standard Medicare supplement benefit plan.
one (1) for each of the following cases:
  1. The inclusion of new or innovative benefits;
  2. The addition of either direct response or agent marketing methods;
  3. The addition of either guaranteed issue or underwritten coverage; and
  4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(24)(ii) Except as provided in paragraph (1) of this paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the executive director [commissioner]. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

Section 5. Permitted Compensation Arrangements. (1) An issuer or other entity may provide a commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years shall be the same as that provided in the second year or period and shall be provided for not less than five (5) years.

(3) An issuer or other entity shall not provide compensation to its agents or other producers, and an agent or producer shall not receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.


Section 7. Requirements for Application Forms and Replacement Coverage (1) Comparison statement. If a Medicare supplement policy or certificate is to replace another health insurance policy or certificate, there shall be presented to the applicant, no later than at the time of taking the application, HIPMC-M5-1 (071(9) (04)). Direct response issuers shall present the comparison statement to the applicant not later than when the policy is delivered. Agents shall:

(a) Obtain the signature of the applicant on the comparison statement;
(b) Sign the comparison statement; and
(c) Send the comparison statement to the issuer. A copy of the comparison statement shall be attached to the replacement policy.

(2) Application forms. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application:

(a) The applicant currently has another Medicare supplement, Medicare Advantage, Medicaid coverage, or another (other) health insurance policy or certificate in force; or
(b) A Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and the agent containing the following questions and statements may be used:

1. Statements.
   a. You do not need more than one (1) Medicare supplement policy.
   b. If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.
   c. You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
   d. If after purchasing this policy you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended for twenty-four (24) months, if requested during your entitlement to benefits under Medicaid. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially-equivalent policy) will be reinstated if requested within ninety (90) days of losing Medicaid eligibility.
   e. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D when your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

2. Counseling services may be available in your state to provide...
advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicare Program, including benefits as a qualified Medicare beneficiary (QMB) and a specified low-income Medicare beneficiary (SLMB).

2. Questions. If you have lost or are losing other health insurance coverage and have received notice from your prior insurer informing you that you were eligible for guaranteed issue of a Medicare supplemental insurance policy or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS (please mark Yes or No below with an 'X'). To the best of your knowledge:

(a) Did you turn age sixty-five (65) in the last six (6) months?
   Yes No
(b) Did you enroll in Medicare Part B in the last six (6) months?
   Yes No
   (c) If you did enroll in Medicare Part B in the last six (6) months, what is the effective date? ______/____/____
(d) Are you covered for medical assistance through the state Medicare Program? (NOTE TO APPLICANT: If you are participating in a "Spend-down Program," and have not met your "Share of Cost," please answer No to this question.) Yes No
(e) If you are covered for medical assistance through the state Medicare Program, will Medicare pay your premiums for this Medicare supplement policy? Yes No

f. Do you receive any benefits from the state Medicare Program other than payments toward your Medicare Part B premium? Yes No

g. If you have had coverage from any Medicare plan other than original Medicare within the past sixty-three (63) days, (for example a Medicare Advantage Plan or a Medicare HMO or PPO), fill in the start and end dates below. If you are still covered under this plan, leave the "End" blank. Start ______/____/____ End ______/____/____

h. If you are still covered under a Medicare plan, do you intend to leave your current coverage with this new Medicare supplement policy? Yes No
   (i) Was this your first time in this type of Medicare Plan? Yes No
   (d) Did you drop a Medicare supplement policy to enroll in the Medicare plan? Yes No
(k) Do you have another Medicare supplement policy in force? Yes No

I. If you do have another Medicare Supplement Policy in force, what policy do you have for Direct Mailers? Yes No

m. If you do have another Medicare supplement policy in force, do you intend to replace your current Medicare supplement policy with this policy? Yes No

n. Have you had coverage under any other health insurance within the past sixty-three (63) days, (for example, an employer, union, or individual plan)? Yes No

o. If you have had coverage under any other health insurance within the past sixty-three (63) days, what was the type of policy? ______

p. If you have had coverage under any other health insurance within the past sixty-three (63) days, what were the dates of coverage under the policy? If you are still covered under this plan, leave the "End" blank. Start ______/____/____ End ______/____/____

(a) Do you have another Medicare supplement policy or certificate in force? Yes No

(b) If so, with which company?
(c) If so, do you intend to replace your current Medicare supplement policy with this policy or certificate?

(b) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?
(1) If so, with which company?
(2) What kind of policy?

(c) Are you covered for medical assistance through the state Medicare Program?
(1) Are a specified low-income Medicare beneficiary (SLMB)?
(2) As a qualified Medicare beneficiary (QMB)?
(3) For other Medicare benefits?

(3) Agents shall list any other health insurance policies they have sold to the applicant, including: (a) [list] Policies sold which are still in force.
(b) [list] Policies sold in the last five (5) years which are no longer in force.

(4) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the issuer, shall be returned to the applicant by the issuer upon delivery of the policy.

(5) Upon determining that a sale will involve replacement of Medicare supplement coverage, an issuer (other than a direct response issuer), or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except if coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant, when the policy is issued the notice regarding replacement of Medicare supplement coverage.

(6) The notice required by subsection (5) of this section for an issuer shall be provided in substantially the following form in no less than twelve (12) point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT OR MEDICARE ADVANTAGE INSURANCE

(Insurer Name and Address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to your application or before you have furnished, you intend to terminate existing Medicare supplement or Medicare Advantage [health] insurance and replace it with a policy to be issued by (insurer name) Your new policy provides (insert here an amount of time not less than thirty (30) days) within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with your current health insurance plan. If, after due consideration, you find that purchase of this Medicare supplement or Medicare Advantage coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage. You should evaluate the need for other health coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER OR AGENT (OR OTHER REPRESENTATIVE):

I have reviewed your current health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason(s) (check one):

Additional benefits
   No change in benefits, but lower premiums
   Fewer benefits and lower premiums
   My plan has outpatient prescription drug coverage, and I am enrolled in Medicare Part D
   Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment (Optional only for direct mailers)

Other (please specify):

(a) [Note: If the insurer of the Medicare supplement policy being applied for does not or is otherwise prohibited from imposing pre-existing condition limitation, please skip to statement (b) below.]

Health conditions which you may presently have (so-called pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy (this paragraph may be modified if pre-existing conditions are, in fact, covered under the new policy).

(b) State law provides that your replacement policy or certificate may not contain new pre-existing conditions, waiting periods, elimination periods, or probationary periods. The insurer waives any time periods applicable to pre-existing conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent that time was spent.
(c) If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the insurer to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been recorded properly. (If the policy or certificate is guaranteed issue, this paragraph need not appear).

(d) Do not cancel your present policy until you have your new policy and are sure that you want to keep it.

Signature of Agent or Other Representative:
Typed Name and Address of Agent:
The above "Notice to Applicant" was delivered to me on:
Date:
Applicant's Signature:

(7) Subsection (6)(a) and (b) of this section may be omitted from the replacement notice if the replacement policy or certificate does not involve application of a new preexisting condition limitation.

Section 8. Filing Requirements for Advertising of Medicare Supplement Policies. (1) An issuer shall provide a copy of any Medicare supplement policy advertisement intended for use in Kentucky whether through written publication, radio, or television, to the executive director [commissioner] prior to use. Advertisements shall not require approval prior to use, but an advertisement shall not be used if it has been disapproved by the executive director [commissioner] and notice of the disapproval has been given to the issuer.

(2) Issuers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation materials used to obtain the names and addresses of the "leads" are filed as advertisements as required by this section. Issuers and agents shall not use "leads" if the solicitation materials have been disapproved by the executive director [commissioner].

Section 9. Policy Delivery. If a Medicare supplement policy is not delivered by mail, the agent or issuer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipt to the issuer.

Section 10. Standards for Marketing. (1) An issuer, directly or through its agents or other representatives, shall:
(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp, or other appropriate means, on the first page of the policy the following disclosure: "Notice to buyer: This policy may not cover all of your medical expenses."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(e) Establish auditable procedures for verifying compliance with this subsection.

(2) In addition to the practices prohibited in KRS 304.12 and 800 KAR 12:092, the following acts and practices shall be prohibited:
(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or Insurance company.

(3) The terms "Medicare supplement," "Medgap," "Medicare Wrap-Around," and words of similar import shall not be used unless the policy is issued in compliance with the administrative regulation.

Section 11. Appropriateness of Recommended Purchase and Excessive Insurance. (1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of recommended purchase or replacement.

(2) Any sale of Medicare supplement or policy or certificate [coverage] that will provide an individual more than one (1) Medicare supplement policy or certificate shall be prohibited.

(3) An insurer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C, unless the effective date of the coverage is after the termination date of the individual's part C coverage.

Section 12. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods, and Probationary Periods in Replacement Policies or Certificates. (1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate for similar benefits, to the extent this time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods.

Section 13. With respect to changes made to this administrative regulation to comply with KRS 304.14-500 and 42 U.S.C. 1395w-101-1395w-152, which includes provisions effective January 1, 2006, an issuer may:

1. Continue to use currently-approved forms, as appropriate, through December 31, 2005;

2. Offer any authorized Medicare supplement plan upon approval by the executive director; and

3. Upon the effective date of this administrative regulation, file changes to forms with the executive director to comply with KRS 304.14-500, 42 U.S.C. 1395w-101 - 1395w-152, and this administrative regulation.

Section 14. Incorporation by Reference. (1) "HIPMC-MS-1 (3/01)* is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office [Department] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. It is available Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office's [department's] internet web site at http://dol.ppr.ky.gov.[www.doi.state.ky.us].

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 11 a.m.
CONTACT PERSON: Carlie Banahan, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.
ENVIROMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, September 13, 2005)

806 KAR 17-420. Rates, premiums and loss ratio requirements in Medicare supplement insurance policies.


STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director [Commissioner] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.14-510 authorizes the Executive Director [Commissioner] of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Executive Director [Commissioner] of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the Executive Director [Commissioner] of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.38. This administrative regulation establishes minimum standards for rates, premiums, and loss ratio requirements in Medicare supplement insurance policies.

Section 1. Definitions. (1) "Certificate" is defined in KRS 304.14-500(2).

(2) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(5) "Executive director" means the Executive Director of the Office of Insurance [Commissioner] as defined in KRS 304.1-060(4).

(4) "Issuer" means insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(5) "Medicare" is defined in KRS 304.14-500(4).

(6) "Medicare supplement policy" is defined in KRS 304.14-500(2).

(7) "Office" means the Office of Insurance.

(8) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(9) [69] "Secretary" means the Secretary of the United States Department of Health and Human Services.

Section 2. Loss Ratio Standards and Refund or Credit of Premium. (1) Loss ratio standards.

(a) Pursuant to KRS 304.14-530, a Medicare supplement policy form or certificate form shall not be delivered or issued for delivery in Kentucky unless it is expected to return to policyholders and certificate holders in the form of a refund of premiums earned in the case of group policies. A refund or credit shall be made only if the benchmark loss rate exceeds the adjusted experience loss ratio, and the amount to be refunded or credited exceeds a minimal level. The refund shall include interest from the end of the calendar year to the date of the refund or credit as a rate specified by the secretary, but shall not be less than the average rate of interest for thirty (30) year treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(b) Refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) For purposes of refund or credit calculation, experience on policies issued prior to October 14, 1990, the issuer shall make the refund or credit calculation separately for:

1. All individual policies combined, including all group policies subject to an individual loss ratio standard when issued; and
2. All other group policies combined for experience.

(d) A refund or credit shall be made only if the benchmark loss rate exceeds the adjusted experience loss ratio, and the amount to be refunded or credited exceeds a minimal level. The refund shall include interest from the end of the calendar year to the date of the refund or credit as a rate specified by the secretary, but shall not be less than the average rate of interest for thirty (30) year treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) Annual filing of premium rates

(a) An issuer of Medicare supplement policies and certificates issued before or after January 1, 1992, in this state shall file annually for approval by the executive director [commissioner], in accordance with the filing requirements and procedures prescribed by KRS 304.14-120, the following:

1. Rates;
2. Rating schedule; and
3. Advertising costs;
4. Commissions and other acquisition costs;
5. Taxes;
6. Capital costs;
7. Administrative costs; and
8. Claim processing costs [in accordance with accepted actuarial principles and practices].

(b) A filing of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage is expected to meet the appropriate loss ratio standards.

(c) For policies issued prior to October 14, 1990, expected claims in relation to premiums shall meet:

1. The originally filed anticipated loss ratio when combined with the actual experience since inception,
2. The appropriate loss ratio requirement from paragraph (a)(1) and (b) of this subsection when combined with actual experience beginning with the effective date of this administrative regulation to date;
3. The appropriate loss ratio requirement from paragraph (a)(1) and (b) of this subsection over the entire future period for which the rates are computed to provide coverage.

(2) Refund or credit calculation.

(a) An issuer shall collect and file with the executive director [commissioner] by May 31 of each year the data contained in the following applicable reporting forms for each type in a standard Medicare supplement benefit plan:

1. A Medicare Supplement Refund Calculation Form, HIPMC-MS-18 (3/01), shall be used to calculate the amount of refund or credit against premiums.

2. A Reporting Form for the Calculation of Benchmark Ratio Since Inception for Individual Policies, HIPMC-MS-19 (3/01), shall be used to calculate the benchmark ratio used to determine the refund or credit against premiums for individual policies.

3. A Reporting Form for the Calculation of Benchmark Ratio Since Inception for Group Policies, HIPMC-MS-20 (3/01), shall be used to calculate the benchmark ratio used to determine the refund or credit against premiums for group policies.

(b) If [here] completing a Medicare Supplement Refund Calculation Form, as required by paragraph (a)(1) of this subsection, the following requirements shall be met:

1. If on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 2), then a refund of calculation shall be required.

2. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan.

3. For purposes of refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) For policies or certificates issued prior to October 14, 1990, the issuer shall make the refund or credit calculation separately for:

1. All individual policies combined, including all group policies subject to an individual loss ratio standard when issued;
2. All other group policies combined for experience.

(d) A refund or credit shall be made only if the benchmark loss rate exceeds the adjusted experience loss ratio, and the amount to be refunded or credited exceeds a minimal level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at the rate specified by the secretary, but shall be less than the average rate of interest for thirty (30) year treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.
3. Supporting documentation, including ratios or incurred losses to earned premiums by policy duration.
(b) The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed.
(c) The demonstration shall exclude active life reserves.
(d) An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.
(e) As soon as practicable prior to the effective date of enhancements in Medicare benefits, every Issuer of Medicare supplement policies or certificates in Kentucky shall file with the executive director [commissioner], in accordance with KRS 304.14-120:
1. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable Medicare supplement policies or certificates. Supporting documents as necessary to justify the adjustment shall accompany the filing.
2. Appropriate premium adjustments necessary to produce an expected loss ratio under the policies and certificates that will conform to the minimum loss ratio standards for Medicare supplement policies, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the Issuer for Medicare supplement policies or certificates. A premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described in this subsection, shall not be made with respect to a policy at any time other than upon its renewal date or anniversary date.
3. If an Issuer fails to make premium adjustments acceptable to the executive director [commissioner], the executive director [commissioner] may order premium adjustments, refunds, or premium credit deemed necessary to achieve the loss ratios required by this section.
(f) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. These riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement Insurance benefits provided by the Medicare supplement policy or certificate. Public hearings. The executive director [commissioner] may conduct a public hearing to gather information concerning a request by an Issuer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance shall be made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in accordance with KRS 304.2.

Section 3. With respect to changes made to this administrative regulation to comply with KRS 304.14-500 and 42 U.S.C. 1395w-101 - 1395w-152, which includes provisions effective January 1, 2006, an Issuer may:
1. Continue to use currently-approved forms, as appropriate, through December 31, 2005;
2. Offer any authorized Medicare supplement plan upon approval by the executive director; and
3. Upon the effective date of this administrative regulation, file changes to forms with the executive director to comply with KRS 304.14-500, 42 U.S.C. 1395w-101 - 1395w-152, and this administrative regulation.

Section 4. Material Incorporated by Reference. (1) The following material is incorporated by reference:
(a) "HIPMC-MS-18 (3/01)"
(b) "HIPMC-MS-19 (3/01)"
(c) "HIPMC-MS-20 (3/01)"
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office [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 office's [department's] Internet web site at http://dor.ky.gov (www.dor.state.ky.us).

LAJJUA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY, July 12, 2005
FILED WITH LRC: July 14, 2005 at 11 a.m.
CONTACT PERSON: Carlie Banahan, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40620, phone (502) 564-6088, fax (502) 564-2726.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings, and Construction
Division of Plumbing
(As Amended at ARRS, September 13, 2005)
815 KAR 20:020. Parts or materials list.
RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200
STATUTORY AUTHORITY: KRS 318.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office [department], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. EO 2003-054 filed December 23, 2003 created the Environmental and Public Protection Cabinet. [EO 2004-031 filed January 6, 2004 changed the Department of Housing, Buildings, and Construction to the Office of Housing, Buildings, and Construction.] This administrative regulation establishes an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1. Definitions. (1) "ABS" means acrylonitrile-butadiene-styrene pipe.
(2) "APM" means the "Approved Parts or Materials List."
(3) "ASTM" means American Society for Testing Materials.
(4) "Code" is defined by KRS 318.010(11).
(5) "Committee" means the State Plumbing Code Committee.
(6) "Office" means the Office of Housing, Buildings, and Construction.
(7) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.
(8) "Person" is defined by KRS 318.010(9).
(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APM). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.
(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the office as being equal to or better than other similarly approved items for inclusion in the APM. The APM may specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APM. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APM. The request shall include:
(a) A description of the part or material for which approval is sought;
(b) Available technical data;
(c) A listing of other authorities which have approved the use of the part or material; and
2. The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the office.

(b) A hearing shall be held before the committee if requested by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the office, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Frankfort, Kentucky 40601.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be subject to inspection by the Plumbing Inspector:

1. Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, 0.032.

2. A Flushmate water closet tank.

3. Microbore company. Two (2) quart flush toilets.

4. Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

5. Supertherm low flush toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

6. IFO Sanatar AB Model 3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F7 Balcock.

7. Cashmeier MX (quantum 150-1) Water Closet Combination and Flushmate II flushometer/Tank as manufactured by Mansfield Plumbing Products P.O. Box 10.

8. Dual flush water closets by Caroma, USA. The water closets shall use eight-tenths (8) gallons for the short flush cycle and one and six-tenths (1.6) gallons for the full flush cycle.

9. Tubular traps with gasket in trap seal.

10. Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

11. Liberty Pump Model 402, Laundry Trap Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

12. Zoeller Drain pump and HIlO Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

13. Liberty Pump Model 402, Laundry Trap Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

14. Little Giant Pump Company, Drainsour Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

15. Add A Drain (Waste Discharge System) as manufactured by Luton and Associates.

16. Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

17. Electric Drain System as manufactured by Myers for light commercial and household usage.

18. No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

19. Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

20. Celotex pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

21. Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

22. Carlisle syntec systems. Vent flashings for sueraed and Bunt-Ply roofing systems as required by Carlisle Corporation.

23. Trocal roof systems. Vent flashings for Trocal roofing systems as required by Dynamic Nobel of American, Inc.

24. Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Astee Washer Company.

25. HI-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

26. Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

27. Senes 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

28. Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid of six (6) inches of sandgrillage and shall be backfilled by hand and tamped six (6) inches around piping or be surrounded by six (6) inches of sand grillage.

29. Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

30. Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.


32. Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA and W-152 and W-154.

2. Earnex Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitakline Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 7200, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermal couple of the relief valve extends into the heat chamber discharge.


6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model WOSU without a temperature and pressure relief valve.

9. Amstol hot water heater model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chromonte Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.


12. Nova Hot Water Generator Models: VESS/50, VESS/10, VESS/714, VESS/16, VESS/18, VESS/19 and VESS/12 as manufactured by Hot Water Generators, Inc.
13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

14. Ariston electric water heaters, model numbers P-1SS and P-10S and shall be equipped with an approved temperature and pressure relief valve.

15. Viallant Corporation gas fired point of use water heater.


17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

18. Autocap Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/240; #153/240; #183/240; #183/240; #183/30 and #183/30.


20. Gliebel ElectraTankless Water Heater; Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks.

21. Bosch Aqua tankless water heater. Models 125X, 125B, 125S, 125BS, 125FX and 38B. All models to be installed with temperature and pressure relief valves.

22. Controlled Energy Corporations "Powerstream" tankless water heater.

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gallon models.

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves.

25. Aquastar AC2240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves.


27. Takagi Industrial Company USA, Inc., Instantaneous Water Heaters, Models: T-KLS; T-K JR; T-K2; T-K20 to be installed with temperature and pressure relief valve.


29. QuiesdaleInstantaneous Water Heater Models: QVW 6-100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees.

30. Seasco Residential Tankless Water Heaters Model: RA 05, RA 07, RA 09, RA 11, RA 14, RA 18, RA 22 and RA 28. All models shall be equipped with an approved temperature and pressure relief valve


12. Orion fittings for acid waste piping systems for above and below ground.


14. Johns Manville Flex I drain roof system drain.

15. Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

16. Scottish Clad brand waterproofing system as manufactured by the IM Company for thin-set installation of ceramic and quarry tile over concrete shower stalls, bathrooms, penthouse closets limited to those applications on concrete floors and using metallic soil and waste pipe.

17. Elkaq Aqua-chill water dispensers.

18. Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

19(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) Ranco Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

20. Interceptors

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.


(d) Rookseal separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, QF, GFE, GAS, GPS, GSS, OHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

21. Grease Interceptors as manufactured by Encopo, Inc. of St. Charles, IL.

(f) Grease Traps USA: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.


23. Contechns A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

24. Nonchel water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

25. Eljer plumbing ware - Elgers ultra one/g water closet.

26. "Power Fiber" and "Quick Joint" as manufactured by Zoeller Company shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(h) Hydromatic JB-1 System as manufactured by Hydromatic Pumps, Inc.

27. Exemplar Energy garden solar water heater.

28. ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only, ProSet E-Z flex coupling is approved for similar or dissimilar materials.

29. (a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

30. Flood-Gate Automatic Backwater Valve as manufactured by Bbyb-Sie-Coix.

(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.

29. Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. The use of Snap-All Inserter/Reducer transition bushings is included in this approval.

30. Mission Rubber Company "Band-Seat Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

31(a) Laticone 9235 Waterproof Membrane to be used as a sealing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

32. DFW Elastomic PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers.

33. (a) Fenco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.
(52) American Pipe Lining, Inc., APL 2000, which is an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the following conditions:
(a) A plumbing construction permit shall be required;
(b) Installation shall be by a licensed plumber;
(c) Water quality shall be tested before and after each project, and
(d) A water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM".

(53) Base Products Corporation:
(a) Water powered pump: basump. Each model shall:
1. Be installed with a reduced pressure principle backflow preventer with copper piping only;
2. Be approved for groundwater removal only; and
3. Require incoming water pressure of 50 psi to operate.
(b) Battery back-up pump: hydroump. [Each model shall be installed with a Reduced-Pressure Principle backflow preventer with copper pipes only.]

(54) Perma-Liners Industries, Inc. Lateral Lining System.
(a) This system is approved for pipe sizes three (3) inches [inch] through eight (8) inches [inch] for interior and exterior installations.
(b) Interior applications shall require videoed before and after installation and shall have an additive of at least (5) pounds of air test or equivalent for a period of fifteen (15) minutes as required by referenced in 815 KAR 20-150, Section 4(2) or (3).
(c) Exterior applications shall [must be] videoed before and after and shall have an additive to a smoke test to comply with 815 KAR 20-150, Section 4(6).
(d) A permit shall be obtained prior to an exterior or interior application. [Permits are required for both applications.]

(55) Stainless Steel Line System for potable water applications manufactured by Victaulic, [for above ground applications only].

(56) Wallgate, Classic Model CME recessed and molded handwasher/dryer.

JOHN W. CLAY
For LAJUANA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: July 14, 2005
FILED WITH LRC: July 15, 2005 at 10 a.m.
CONTACT PERSON: David Reichert, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRIS, September 13, 2005)

815 KAR 20-120. Water supply and distribution.

RELATES TO: KRS 318.010, 318.130, 318.150, 318.165, 318.200

STATUTORY AUTHORITY: KRS 198B 040(10), 318.130
NECESSITY, FUNCTION, AND CONFORMITY: The office [department] is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation establishes the types of piping and/or pipe sizes for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

Section 1. Definitions. (1) "ASSE" means the American Society of Sanitary Engineers [and a copy of a specification identified in this administrative regulation may be obtained by writing the American
Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the department and other governing authorities. Toxic material shall be kept out of a potable water system.

(a) The pipe conveying, and each surface in contact with, potable water shall be constructed of nontoxic material.

(b) A chemical or other substance that could produce either a toxic condition, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in the system.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material which will affect either the taste, odor, color, or potability of the water supply if the tank is placed in, or returned to, service. An interior tank coating shall be from the list approved by the authority having jurisdiction.

(2) Potable water shall be accessible to a plumbing fixture that supplies water for drinking, bathing, culinary use or the processing of a medicinal, pharmaceutical, or food product.

(3) The potable water supply system shall be designed, installed, and maintained to prevent contamination from a nonpotable liquid, solid, or gas being introduced into the potable water supply through a cross connection or other piping connection to the system.

(4) A cross connection shall be prohibited unless:

(a) The connection meets the other requirements established in this administrative regulation; and

(b) A suitable protective device is [except as approved by the authority having jurisdiction, and a suitable protective device shall be installed.

(5) A cross connection between a private water supply and a public water supply shall not be made.

(b) Closed water systems, protection from excess pressure:

(a) If a single check valve is installed in a water system, a thermal expansion tank sized in accordance with manufacturer's instructions shall be installed in the cold water supply located near the water heater.

(b) If a backflow preventer is installed in a water system, a properly sized thermal expansion tank or other pressure relief device listed in 815 KAR 20.020 shall be installed in the water distribution system.

(c) If a pressure reducing valve not equipped with a bypass is installed in the cold water supply line to a water heater, a thermal expansion tank shall be installed in the cold water line near the water heater.

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow shall include both back pressure and back siphonage.

(a) An air gap shall provide the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows.

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be:

   a. Twice the effective opening of a potable water outlet; or
   b. If the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, three (3) times the effective opening of the outlet.

3. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

- MINIMUM AIR GAPS FOR PLUMBING FIXTURES

<table>
<thead>
<tr>
<th>Fixture</th>
<th>Minimum Air Gap</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>When not affected by near wall (inches)</td>
</tr>
<tr>
<td>Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter</td>
<td>1</td>
</tr>
<tr>
<td>Sink, laundry trays, goose neck, bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter</td>
<td>1 1/2</td>
</tr>
<tr>
<td>Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter</td>
<td>2</td>
</tr>
<tr>
<td>Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)</td>
<td>1</td>
</tr>
<tr>
<td>Effective openings greater than 1 inch</td>
<td>2 x diameter of effective opening</td>
</tr>
</tbody>
</table>

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps if spaced from the inside edge of the spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap if spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more vertical walls or ribs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b) A reduced pressure principle back pressure backflow preventer shall provide the best mechanical protection against backflow available, and be considered equivalent to an air gap.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions. This device shall be a manufactured assembly consisting of two (2) independently acting check valves and including a shutoff valve at each end, and petcock and test gauge for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions. If applicable, an atmospheric type vacuum breaker shall be installed after the last cutoff valve on the water line. This device may operate under normal atmospheric pressure if the critical level (CL) is installed at the required height in accordance with the following table - Critical Level (CL) Settings for Atmospheric Type Vacuum Breakers.

- CRITICAL LEVEL (CL) SETTINGS FOR ATMOSPHERIC TYPE VACUUM BREAKERS

<table>
<thead>
<tr>
<th>Fixture or Equipment</th>
<th>Method of Installation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aspirators, ejectors, and showers</td>
<td>CL at least 6 in. above flood level of receptacle</td>
</tr>
<tr>
<td>Bids</td>
<td>CL at least 6 in. above flood level of receptacle</td>
</tr>
<tr>
<td>Cup beverage vending machines</td>
<td>CL at least 12 in. above flood level of machine</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>On models without built-in vacuum breakers:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dental units</td>
</tr>
<tr>
<td>Dishwashing machines</td>
</tr>
<tr>
<td>Flushometers (closet &amp; urinal)</td>
</tr>
<tr>
<td>Garbage can cleaning machines</td>
</tr>
<tr>
<td>TYPE AND PRESSURE</td>
</tr>
<tr>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Reduced Pressure Principle Backflow Preventer For high hazard cross connections.</td>
</tr>
<tr>
<td>(A) Double Check Valve Assembly For low hazard cross connections.</td>
</tr>
<tr>
<td>(B) Dual Check Valve Backflow Preventer For low hazard applications.</td>
</tr>
<tr>
<td>(A) Backflow Preventer with Intermediate Atmospheric Vent For moderate hazard cross connections in small pipe sizes.</td>
</tr>
<tr>
<td>(B) Backflow Preventer for Carbonated Beverage Machine.</td>
</tr>
<tr>
<td>(C) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker in small pipe sizes for moderate to low hazard.</td>
</tr>
</tbody>
</table>
## CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

<table>
<thead>
<tr>
<th>Type of Connection</th>
<th>Degree of Hazard</th>
<th>Acceptable Protection</th>
<th>Backflow</th>
<th>Backsiphonage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Severe</td>
<td>Moderate</td>
<td>Minor</td>
<td>Air Gap</td>
</tr>
<tr>
<td>I. Connections subject to back pressure from:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Pumps, tanks, and lines handling:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Toxic substance</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2. Nontoxic substance</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>B. Boilers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. With chemical additives</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2. Without chemical additives</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>C. Gravity due to obvious site conditions subject to:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Contamination by toxic substances</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Contamination by nontoxic substances</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>II. Water outlets and connections not subject to back pressure</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Connection to sewer or sewage pump</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Outlet to receptacles containing toxic substances</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C. Outlet to receptacles containing nontoxic substances</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D. Outlet into domestic water tanks</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E. Flush valve toilets</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>F. Flush valve urinals</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>G. Outlets with hose attachments subject to contamination from:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Toxic substance</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Nontoxic substance</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>H. Outlets to recirculating cooling tower</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. With chemical additives</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Without chemical additives</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Section 3. Water Required. (1) A building equipped with a plumbing fixture and used for habitation or occupancy shall be equipped with a supply of potable water. (2) In a building used as a residence or a building in which people assemble or are employed, both hot and cold water shall be supplied.
Section 4. Water Service. (1) The water service piping to a building shall:
   (a) Not be less than three-fourths (3/4) inch nominal pipe size; and
   (b) [but shall] be of sufficient size to permit a continuous and ample flow of water to each fixture in the building.

(2) Except as provided in this paragraph, the underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth. The pipe [except they] may be placed in the same trench if:
   (a) The bottom of the water service pipe at all points is [shall be] at least eighteen (18) inches above the top of the sewer at its highest point.
   (b) The water service pipe is [shall be] placed on a solid shelf excavated at one (1) side of the common trench; and
   (c) The number of joints in the water service pipe is [shall be] kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of another piping system.

(2) Piping which has been used for a purpose other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing a water closet or urinal, if the water is piped in an independent system.

(a) If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified [by a-color marking, metal tag, or other appropriate method] as may be approved by the governing authority.

(b) An outlet on the nonpotable water distribution system used for a drinking or domestic purpose shall be permanently posted: DANGER - UNSAFE WATER.

2. Each branch, fitting, or valve shall be identified by the word "NONPOTABLE WATER" on the valve or by a sign or brass tag that shall be permanently affixed to the pipe, fitting, or valve. The identification marking shall not be concealed and shall be maintained by the owner.

(4) A backflow device or cross-connection control device shall be approved by the department.

(5) A combination stop and water valve, cock, or hydrant shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with a public water supply.

(7) Water used for cooling of equipment or in another process shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or used for a nonpotable purpose on written approval of the plumbing official.

Section 6. Water Supply to Fixtures. (1) A plumbing fixture shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition.

(a) A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve.

(a) The tank or valves shall flush at least a sufficient amount of water to thoroughly cleanse the surface area of a water closet, urinal or similar fixture.

(a) If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valve shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage.

(a) The fixture shall have a vacuum breaker.

(a) A plumbing fixture, device or appurtenance shall be installed in a manner that shall prevent a possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 7. Connections to Boilers. A potable water connection to a boiler feed water system in which a boiler water conditioning chemical is introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where a chemical is introduced. A boiler shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water pipes from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. More than three and one-half (3 1/2) inch fixture branches shall not be supplied from a one-half (1/2) inch pipe.

(a) The following schedule shall be used for sizing the water supply piping to a fixture. The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture.

A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

<table>
<thead>
<tr>
<th>Fixture Branches</th>
<th>Nominal Pipe Size (Inches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bath tubs</td>
<td>1/2</td>
</tr>
<tr>
<td>Combination sink and tray</td>
<td>1/2</td>
</tr>
<tr>
<td>Cuspidor</td>
<td>1/2</td>
</tr>
<tr>
<td>Drinking fountain</td>
<td>1/2</td>
</tr>
<tr>
<td>Dishwasher (domestic)</td>
<td>1/2</td>
</tr>
<tr>
<td>Kitchen sink (ras)</td>
<td>1/2</td>
</tr>
<tr>
<td>Kitchen sink (cor)</td>
<td>1/2 or 3/4 as required</td>
</tr>
<tr>
<td>Lavatory</td>
<td>1/2</td>
</tr>
<tr>
<td>Laundry tray</td>
<td>1/2</td>
</tr>
<tr>
<td>Sinks (service, slop)</td>
<td>1/2</td>
</tr>
<tr>
<td>Sinks flushing rm</td>
<td>3/4</td>
</tr>
<tr>
<td>Urinal (flush tank)</td>
<td>1/2</td>
</tr>
<tr>
<td>Unnal (direct flush type)</td>
<td>1/2 or 3/4 as required</td>
</tr>
<tr>
<td>Water closet (tank type)</td>
<td>1/2</td>
</tr>
<tr>
<td>Water closet (flush valve type)</td>
<td>1</td>
</tr>
<tr>
<td>Hot water boiler</td>
<td>3/4</td>
</tr>
<tr>
<td>Hose bibs</td>
<td>1/2</td>
</tr>
<tr>
<td>Wall hydrant</td>
<td>1/2</td>
</tr>
<tr>
<td>Domestic clothes washer</td>
<td>1/2</td>
</tr>
<tr>
<td>Shower (single head)</td>
<td>3/4</td>
</tr>
</tbody>
</table>

(3) Water hammer. In a building supply in which a device or appurtenance is installed utilizing a quick acting valve that causes noise due to water hammer, a protective device, including an air chamber or approved mechanical shock absorber, shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If a mechanical shock absorber is installed, the absorber shall be in an accessible place.

(b) If a mechanical device is used, the manufacturer's specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. (1) Water supply piping for a potable water system shall be as follows:

(a) Galvanized wrought iron;

(a) Galvanized steel;

(a) Brass;

(a) Types K, L, and M copper;

(a) Cast iron;

(a) Types R-K, R-L, and R-M brass tubing;

(a) Standard high frequency welded tubing and labeled as ASTM B-586-73;

(b) Fusion welded copper tubing produced and labeled as ASTM B-447-72 and ASTM B-251;

(b) DWV welded brass tubing produced and labeled as ASTM B-587-73;

(b) Seamless stainless steel tubing, Grade H, produced and labeled as ASTM A-268-68;

(b) Filament wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold);

(b) Polyethylene (PE) plastic pipe produced and labeled as ASTM D-2239-89 or ASTM F-714;

(b) Cross-linked polyethylene (PEX) pipe produced and...
labeled as ASTM F-676 for cold water and ASTM F-677 for hot or cold water applications;

(n) Cross-linked Polyethylene/Aluminum/Cross-linked Polyethylene (Pex-Al-Pex) pipe produced and labeled as ASTM F-1281;

(o) Polyethylene/Aluminum/Polyethylene (Pe-Al-Pe) pipe produced and labeled as ASTM F-1282;

(p) Copper tubing size PE produced and labeled as ASTM D-2737 for water service. If installed with compression couplings;

(q) Polyvinyl chloride (PVC) plastic pipe produced and labeled as ASTM D-1785-69;

(r) Chlorinated Polyvinyl chloride (CPVC) plastic pipe produced and labeled as ASTM D-2849-70;

(s) Polyvinyl chloride (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 pipe produced and labeled as ASTM D-2241-84;

(t) Polybutylene (PB) plastic pipe produced and labeled as ASTM-D-3309-85 with brass or copper fitting; or

(u) Fusion welded Polypropylene Pipe Products which meet NSF Standards 61 and 14 and ASTM 2369. These products should be approved for use only in the following plating sizes five-eighths (5/8) inch through six (6) inch [al-aluminized/bronze, galvanized steel, brass, Type K, L, and M copper, cast iron, Types R, K, L, and R-M brass tubing, standard high frequency welded tubing, produced and labeled as ASTM D-686-73, fusion welded copper tubing produced and labeled as ASTM-D-447-72 and ASTM D-261, DWV welded brass tubing produced and labeled as ASTM D-687-72; and, polyethylene/steel tubing, Grade M produced and labeled as ASTM A-268-69. Element-wound reinforced thermosetting resin pipe produced and labeled as ASTM-D-2996 (red thread for cold-water use and silver and green thread for hot and cold) and polyethylene (PE) plastic pipe produced and labeled as ASTM D-2241-69 or ASTM F-714, cross-linked polyethylene (PXL), produced and labeled as ASTM F-676 for cold water and ASTM F-677 for hot or cold water. Cross-linked --- cross-linked Polyethylene/Aluminum/Cross-linked Polyethylene (Pex-Al-Pex) produced and labeled as ASTM F-1281, Polyethylene/Aluminum/Polyethylene (Pe-Al-Pe) produced and labeled as ASTM F-1282, copper tubing size PE produced and labeled as ASTM D-3309-85 for water service. If installed with compression couplings, Polyethylene chloride (PVC) plastic pipe produced and labeled as ASTM D-1785-69, Chlorinated Polyethylene chloride (CPVC) plastic pipe produced and labeled as ASTM D-2849-70, Polyvinyl chloride (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 produced and labeled as ASTM D-2241-84, polybutylene (PB) plastic pipe produced and labeled as ASTM D-3309-85 with brass or copper fitting; or fusion welded polypropylene pipe products which meet NSF Standards 61 and 14 and ASTM 2369 approved for above ground only in sizes five-eighths (5/8) inch through six (6) inch [nipples].

(2) A plastic pipe, or fittings shall bear the NSF seal of approval.

(3) Polybutylene pipe utilizing an insert fitting of brass or copper shall use a copper clamping ring.

(4) A polybutylene hot and cold water connector to a lavatory, sink, or water closet shall be produced and labeled as ASTM F-676-85, and polyethylene plastic pipe produced and labeled as ASTM D-3309-85 for a cold water application.

(5) A fitting shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or a fitting that has been used for another purpose shall not be used for the water distribution system.

(6) Each joint in the water supply system shall be made of a screw, gasket, or plastic joint. A cast iron water pipe joint may be caulked, screwed, or machine drawn.

(7) If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or passes through a concrete floor, it shall be wrapped with an approved material to permit expansion or contraction.

(8) Polyethylene or PVC shall not be used below ground under a house or building. If a chlorinated polyvinyl chloride (CPVC) joint or connection is installed below ground under a house or building, the water distribution system shall be tested to at least 100 psi before backfilling. The applicable requirements of 815 KAR 20:060 and 815 KAR 20:073 shall be met.
conditions are met:

1. The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent;
2. The heat exchanger is protected by the manufacturer to 450 PSI;
3. The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and
4. A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. (1) A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater.

(2) Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided.

(3) The water inlet to the heat exchange vessel shall be provided with a check valve. There shall be provided, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation, shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device.

(4) Condensate drain water shall be piped in accordance to the plumbing code and it shall not be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in an area subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. A tank or vat with potable water supply below the rim shall be subject to the following requirements:

1. If a potable water outlet terminates below the rim of a tank or vat, and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

<table>
<thead>
<tr>
<th>Maximum capacity of water supply line to tank</th>
<th>Diameter of Overflow pipe (inches ID)</th>
<th>Maximum capacity of water supply line to tank</th>
<th>Diameter of overflow pipe (inches ID)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-50 gpm</td>
<td>2</td>
<td>400-700 gpm</td>
<td>5</td>
</tr>
<tr>
<td>50-150 gpm</td>
<td>2 1/2</td>
<td>700-1000 gpm</td>
<td>6</td>
</tr>
<tr>
<td>150-200 gpm</td>
<td>3 1/2</td>
<td>Over 1000 gpm</td>
<td>8</td>
</tr>
</tbody>
</table>

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rates of the supply to the tank or vat, and with all outlet, except the air gap overflow outlet, closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water outlet.

Section 19. Water Distribution for Fan Coil Units. If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch piping and its run shall not exceed 140 feet between the water heater and the heating unit. The applicable requirements established in 815 KAR 20.070 shall be met.

Section 20. Fire Protection Systems. A fire protection system using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the requirements established in

815 KAR 20:100 and this administrative regulation (regulations of the department).

(2) All materials, including the pipe or fitting used for a connection, shall conform with the State Plumbing Code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space.

(a) The connection shall consist of a niser terminating at least four (4) inches above the ground with two (2) and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control.

(b) The ground surface around the niser pipe shall be graded to divert surface drainage.

(c) The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing.

(d) An insulating cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather.

(e) A shutoff valve may be placed below the frost depth on the water service line, but this valve shall not be a stop-and-waste cock.

Section 22. Conservation of water shall comply with the standards established in 815 KAR 20 070.

JOHN CLAY
For LAJUANA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: July 14, 2005
FILED WITH LIRC: July 15, 2005 at 10 a.m.
CONTACT PERSON: Daniel Reichert, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, September 13, 2005)

815 KAR 20:180. Special connections.

RELATES TO: KRS 318.010, 318.130 (Chapter 348)
STATUTORY AUTHORITY: KRS 318.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes requirements regarding waste, other than sanitary wastes. The office (department) is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation concerns itself with waste other than sanitary wastes. This amendment adds a new method of installation (a necessary to bring the administrative regulation into technical compliance with KRS Chapter 348. No other substantive changes were made).

Section 1. Commercial Laundry Wastes. Waste from commercial and institutional washing machines and extractors shall not discharge into an open trench, unless the trench is drained into at least a four (4) inch trap, with a full-size vent. The trench shall be constructed of a material resistant to alkaline waste.

Section 2. Semicommercial Laundries (Automatic). (1) Waste from semicommercial laundries shall discharge into a four (4) inch waste line for washing machines only.

(2) The waste line shall have a full-size vent and the base of the stack shall be washed by either a washing machine or stack tank.

(3) A four (4) inch trap shall be provided in the waste line to serve not more than two (2) washing machines.

(4) Floor drains may be placed in the waste line.
A washing machine shall not...
(9) "Mechanical restraint" means any device attached or applied to a resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(9) (9) "Mental health associate" means:
(a) An individual with a minimum of a bachelor's degree in a mental health related field; a registered nurse; or a licensed practical nurse with at least one (1) year's experience in a psychiatric inpatient or residential treatment setting for children; or
(b) An individual with a high school diploma or an equivalency certificate and at least two (2) five (5)-year work experience in a psychiatric inpatient or residential treatment setting for children; two (2) years of which shall be in a supervisory role, and shall have successfully completed the medicine administration course approved by the Kentucky Board of Nursing for use in child-caring facilities.

(10) [609] "Mental health professional" is defined in KRS 645.020 as a person employed and meeting requirements for a position on the professional staff of a PRTF on the effective date of this administrative regulation until December 31, 2001: a qualified mental health professional as defined by KRS 202A.010; a professional art therapist who is certified pursuant to KRS 300.133; a marriage and family therapist who is certified pursuant to KRS 335.185; a professional counselor who is certified pursuant to KRS 335.185; or a registered nurse with two (2) years experience in a mental health setting.

(11) "Personal restraint" means the application of physical force without the use of any device [for the purpose of restraining the free movement of a resident's body and does not include brief holding without undue force in order to calm or comfort him or her or holding a resident's hand to safely escort him or her from one (1) area to another.]

(12) [609] "Psychiatric residential treatment facility" or "PRTF" is defined in KRS 216B.450(5) [44].

(13) "Restraint" means the use of a mechanical device to involuntarily restrain movement of the whole or a portion of a resident's body as a means-of controlling a resident's physical activity, or to restrict the resident's right of access to the use of intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to the resident with the sole or primary purpose of controlling or limiting the physical activity of the resident. Restraint is differentiated from mechanisms usually and customarily employed during medical, diagnostic, or surgical procedures.

(14) [609] "Secusion" means the involuntary confinement of a resident alone in a room or in an area from which the resident is physically prevented from leaving [for any period of time].

(15) [609] "Special treatment procedures" means any procedure such as chemical restraint, mechanical restraint, personal restraint, or seclusion [and holding] which may have abuse potential or life threatening.

(16) [609] "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant professional.

Section 2. Applicability. (1) A psychiatric residential treatment facility shall be located in a freestanding structure [eight (8)-bed facility].

(a) An entity which was licensed as a PRTF prior to April 9, 1990, may be licensed within a single building for a maximum of sixteen (16) beds, but shall have a minimum of two (2) separate living units. A living unit in a sixteen (16) bed PRTF shall have no more than eight (8) beds.

(b) An entity which has obtained approval for a certificate of need for a sixteen (16) bed PRTF prior to March 26, 1992, may be licensed by the cabinet as two (2) freestanding eight (8)-bed PRTFs located on a common campus.

(c) An eight (8) bed PRTF may be located on a common campus with an existing eight (8) bed PRTF, but each shall be freestanding.

(2) In accordance with KRS 216B.455(5), multiple PRTFs may be located on a common campus if each is [but each shall] freestanding.

(3) [609] If a psychiatric residential treatment facility is located on grounds shared by another licensed facility other than a PRTF, the following shall apply:

(a) The residents of the PRTF and the licensed facility with which it shares grounds shall not have any joint activities or interactions, except for organized educational activities, [conducted by a school operated by the local educational authority for residents] or organized recreational activities, or group therapy for children with similar treatment needs;

(b) Direct-care staff of the licensed facility with which the PRTF shares grounds may provide relief, replacement, or substitute staff coverage to the PRTF; and

(c) For continuity of care, at least fifty (50) percent of direct care staff of the PRTF shall be employed by the PRTF; if the provisions of paragraph (a) of this subsection are met, the only services or components of the physical plant that may be shared are those related to housekeeping, maintenance, dietary and recreational facilities or grounds.

(4) [609] PRTFs that are located in the same structure or on a common campus [on the same grounds in accordance with subsection (1) of this section] may share joint activities and staff.

Section 3. Licensure. A [The] psychiatric residential treatment facility shall comply with all the conditions for licensure contained in 902 KAR 20.008.

Section 4. Governing Body. A PRTF [Each facility] shall have a governing body with overall authority and responsibility for the facility's operation.

(1) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement, or legislative act.

(2) A facility that is part of a multi-facility system or is operated by a government agency shall have a written description of the facility's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to function as the governing body shall be specified in writing.

(4) If a business relationship exists between a governing body member [member(s)] and the organization, there shall be a conflict of interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall describe the process for the following:

(a) Adopting policies and procedures;

(b) Providing sufficient funds, staff, equipment, supplies, and facilities to assure that the facility is capable of providing appropriate and adequate services to residents;

(c) Overseeing the system of financial management and accountability;

(d) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care;

(e) Electing, appointing, or employing the clinical and administrative leadership personnel of the facility, and defining the qualifications, authority, responsibility, and function of those [such] positions; and

(f) Approving employment of mental health professional staff.

(6) The governing body shall meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) If [When] a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 5. Program Director. (1) A [The] program director shall be responsible for the administrative management of the facility.

(2) A [The] program director:

(a) [The] program director[s] shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems; and

(b) Shall have at least minimum qualifications of
[Minimum qualifications shall be] a master's degree or bachelor's degree in the human services field including:
1. Social work;
2. Sociology;
3. Psychology;
4. Guidance and counseling;
5. Education;
6. Religion;
7. Business administration;
8. Criminal justice;
9. Public administration;
10. Child care administration;
11. Christian education;
12. Divinity;
13. Pastoral counseling;
14. Nursing;
15. Other human service field related to working with families and children; [c]

(c) [Applicant] With a master's degree shall have two (2) years of prior supervisory experience in a human services program; or [f]

2. [g] With a bachelor's degree shall have four (4) years of prior supervisory experience in a human services program; and [f]

(d) [c] (d) The program director shall:
1. Shall have three (3) professional references, two (2) personal references, and a criminal record check performed every two (2) years through the Administrative Office of the Courts or the Kentucky State Police (KSP) and
2. Shall not have a crime conviction or plea of guilty pursuant to KRS 17.165 or Class D felony [see KRS 17.165 (5)] (see [g]) and a police record check. [f]
(e) With a prior crime conviction or plea of guilty pursuant to KRS 17.165 or a Class D felony, the applicant shall not be employed.

(3) A [The] program director shall be responsible to the governing body in accordance with the bylaws, rules or policies for the following:
(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff;
(b) Assuring that sufficient qualified and appropriately supervised staff [meeting minimum standards under appropriate supervisory] are on duty to meet the needs of the residents at all times;
(c) Approving purchases and payroll;
(d) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this administrative regulation;
(e) Advising the governing body of all significant matters bearing on the facility's licensure and operations; and
(f) Preparing [Preparation of] a written manual that defines policies and procedures and [which] is regularly revised and updated, and
(h) Assuring that all written facility policies, plans, and procedures are followed.

Section 6. Administration and Operation. (1) A PRF shall have written documentation of the following [Written plan]:
(a) The governing body shall formulate and approve the facility's goals and objectives and develop its programs in a written plan so that the facility's performance can be measured;
(b) A copy of the written plan shall be given to each mental health professional and to the program director;
(c) The written plan shall be reviewed at least annually and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the plan shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs;
(d) The written plan shall include the following:
   (i) An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;
   (ii) A service philosophy with clearly defined assumptions and values;
   (iii) Estimates of the clinical needs of the children and adolescents in the area served by the facility;
   (iv) The services provided by the facility in response to need;
   (v) The population served, including age groups and other relevant characteristics of the resident population;
   (vi) The intake or admission process, including how the initial contact is made with the resident and the family or significant others;
   (vii) The assessment and evaluation procedures provided by the facility;
   (viii) The methods used to deliver services to meet the identified clinical needs of the residents served;
   (ix) The methods used to deliver services to the basic needs of residents in a manner as consistent with normal daily living as possible;
   (x) The methods used to create a home-like environment for the residents;
   (xi) The methods, means and linkages by which the facility involves [will involve] all residents in community activities, organizations [organization], and events;
   (xii) The treatment planning process and the periodic review of therapy;
   (xiii) The discharge and aftercare planning processes;
   (xiv) The facility's therapeutic process;
   (xv) How professional services will be provided by qualified, experienced personnel;
   (xvi) How mental health professionals and direct-care staff who have been assigned specific treatment responsibilities are qualified by training or experience and demonstrated competence and have appropriate clinical privileges; or are supervised by a mental health professional who is qualified by experience to supervise the [such] treatment;
   (xvii) How the facility is [will be] linked to regional inter-agency councils, psychiatric hospitals, community mental health centers, Department for Community Based [Geelal] Services offices and facilities, and school systems in the facility's service area; and
   (xviii) The means by which the facility provides, or makes arrangements for the provision of:
      1. [a] Emergency services and crisis stabilization;
      2. [b] Discharge and aftercare planning [which] promotes continuity of care;
      3. [c] Education and vocational services; and
      4. Services the facility provides [shall provide] to improve stability of care and reduce re-hospitalization including:
         (a) How psychotropic medications and coverage is [shall be] provided to assure the continuous ability to manage and administer medications in crisis situations except for [but excluding] those that may only be administered by a physician; and
         2. How direct-care [direct-care] staffing with supervision is [shall be] provided to manage behavior problems in accordance with the residents' treatment plans, including an array of interventions that are alternatives to seclusion and restraint, and the staff training necessary to implement them;
   (2) The documentation shall be:
   (a) Made available to each mental health professional and to the program director and
   (b) Reviewed and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility [when reviewed or revised]. Revisions in the documentation shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs, whether provided by the facility or by agreement. Educational services to be provided by local education agency or a private agency, at a minimum, shall be arranged for within (60) days prior to the need for the service to be provided.]

2. (d) Professional staff;
(a) A PRF [The facility] shall;
1. Employ a sufficient number of mental health professionals to
meet the treatment needs of residents and the goals and objectives of the facility, and [1]
2. (b) Mental health professionals shall meet all requirements in the licensing, registration, or certification laws relating to their respective professions.
   (c) The facility shall meet the following requirements with regard to professional staffing:
   a. [1] [4] A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed to meet the treatment needs of the residents and the functions which shall be performed by a psychiatrist specified within this administrative regulation.
   b. [2] Except for a PRTF licensed in accordance with Section 2(1)(a) or (b) of this administrative regulation, a PRTF shall employ at least one (1) full-time mental health professional.
   c. [3] A PRTF licensed in accordance with Section 2(1)(a) or (b) of this administrative regulation shall employ:
      1. At least one (1) full-time mental health professional for a PRTF with eight or nine residents,
      2. At least two (2) full-time mental health professionals for a PRTF with ten (10) or more residents.
   d. A mental health professional shall be available to assist on-site in emergencies on at least an on-call basis at all times.
   e. [6] A psychiatrist [physician] shall be available on at least an on-call basis at all times.
   f. [4] Clinical director. The governing body shall designate one (1) full-time mental health professional as clinical director for the PRTF.
      1. In addition to the requirements related to his profession, the clinical director shall have at least two (2) years of years' clinical experience in a mental health setting that serves children or adolescents with emotional problems.
      2. The governing body shall define the authority and duties of the clinical director.
   g. An individual may serve both as the clinical director and program director if the qualifications of both positions are met.
   h. The clinical director shall be responsible for:
      a. The maintenance of the facility's therapeutic milieu; and
      b. Assuring that treatment plans developed in accordance with Section 11(3) of this administrative regulation are implemented.
   5. A full-time mental health professional may be designated as clinical director for more than one (1) PRTF if the PRTFs [PRPs] are located on a common campus [when more than one (1) PRTF shares the same building or is located on a common campus with an existing PRTF].
      a. A PRTF [The facility] shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.
      b. Direct-care staff shall have at least a high school diploma or equivalency and two (2) years [years'] experience in a program in the mental health field serving children or adolescents.
      2. Completion of a forty (40) [twenty-four-(24)] hour training curriculum meeting the requirements of subsection (5)(d) of this section [4(4)(c)] within one (1) month of employment may be substituted for experience, except that no direct-care staff so qualified shall not be given clinical privileges in their [two-or]-bed first year of employment.
      c. In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan shall meet each of the following requirements:
         1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for each three (3) residents during normal waking hours when residents are not in school.
         2. At least one (1) direct-care staff member (three (3)-direct-care staff members) shall be assigned to direct-care responsibilities for each three (3) residents during normal waking hours when residents are not in school; [1] during normal waking hours when the residents are on-site; however, if the number of residents present on-site is six (6) or fewer, the number of direct-care staff members may be reduced to two (2);
         3. At least one (1) direct-care staff member shall be assigned direct-care responsibilities for each three (3) residents who are twelve (12) and under and one (1) for each four (4) adolescents who are over twelve (12) during all hours the residents are awake, not on the living unit, and not in school.
   e. [4] At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are asleep and [1]
   b. A minimum of one (1) additional direct-care staff member who is a mental health associate shall be immediately available on the grounds of the PRTF to assist with emergencies or problems which might arise;
   d. [6] If a mental health professional is directly involved in an activity with a group of residents, he or she may meet the requirement for a direct-care staff member, and
   e. [6] The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.
   f. Written policies and procedures approved by the governing body shall:
      1. Specify the clinical privileges, if any, of each member of the direct-care staff;
      2. Provide for the supervision of the direct-care staff; and
      3. Describe the responsibilities of direct-care staff in relation to professional staff.
   (g) [4] Staff development.
      a. Staff development programs shall be provided and documented for administrative, professional, direct-care, and support staff.
      b. Full-time professional and direct-care staff shall meet the continuing education requirements of their profession or be provided with forty (40) [twenty-(20)] hours per year of in-service training by the facility.
      c. Part-time staff shall have at least twenty-four (24) hours of annual training specific to tasks to be performed.
      d. [6] Each staff member working directly with residents shall receive annual training [demonstrate basic knowledge] in the following areas:
         1. Child and adolescent growth and development;
         2. Emergency and safety procedures;
         3. Behavior management, including de-escalation training; and
         4. Detection and reporting of child abuse or neglect.
      [2] Therapeutic principles and modalities used in the facility;
         3. Building and maintaining a positive therapeutic milieu in the living units;
         4. Techniques of group and child management; and
         5. Detection and reporting of child abuse and neglect.
      d (6) Employment practices.
      a. A PRTF [The facility] shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.
      b. The personnel policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.
      c. The personnel policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.
      d. The PRTF shall maintain job descriptions that:
         1. Are approved by the governing body for all positions specifying the qualifications, duties, and supervisory relationship of the position;
         2. Accurately reflect the actual job situation;
         3. Are revised if a change is made in the required qualifications, duties, supervision, or any other major job-related factor; and
         4. Provide the salary range for each position.
The PRTE shall provide a personnel orientation to all new employees.

2. The governing body shall establish a mechanism for notifying employees of changes in the personnel policies and procedures. [14. (a) The governing body shall maintain job-dependship approved by the governing body for all persons specifying the qualifications, duties, and supervisory relationship of the position.]

(b) Job descriptions shall accurately reflect the actual job situation and shall be revised whenever a change is made in the required qualifications, duties, supervision, or any other major job-related factor. In addition, a salary range for each position shall be provided.

c. Provide a personnel orientation to all new employees.

2. (a) The personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees.

c. The governing body shall establish a mechanism for notifying employees of changes in the personnel policies and procedures.

(a) (c) [15. (a) Information on the following shall be included in the personnel policies and procedures:

1. Employee benefits;
2. Recruitment;
3. Promotion;
4. Training and staff development;
5. Employee grievances;
6. Safety and employee injuries;
7. Relationships with employee organizations;
8. Disciplinary systems;
9. Suspension and termination mechanisms;
10. Rules of conduct;
11. Lines of authority;
12. Performance appraisals;
13. Wages, hours, and salary administration; and
14. Equal employment opportunity and, if [when] required, affirmative action policies.

(b) [16. (a) The personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

2. (a) The personnel policies and procedures shall require a criminal record check through the Administrative Office of the Courts or the Kentucky State Police [appropriate criminal history and police record checks] for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

2. (b) (a) The personnel policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

2. (b) (b) A personnel record shall be kept on each staff member and shall contain the following items:

1. Application for employment;
2. Written references and a record of verbal references;
3. Verification of all training and experience and of licenses, certification, registration, or renewals;
4. Wage and salary information, including all adjustments;
5. Performance appraisals;
6. Counseling actions;
7. Disciplinary actions;
8. Commendations;
9. Employee incident reports; and
10. Record of health exams related to employment [initial and subsequent health clearance].

(a) (c) [17. (a) The personnel policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(a) (d) [18. (a) Performance appraisals shall relate job description and job performance and shall be written. The criteria used to evaluate job performance shall be objective.

Section 7. Resident Rights. (1) A PRTE [The facility] shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, a PRTE [The facility] shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's right to access [to] treatment, regardless of race, religion, or ethnicity;
(b) Each resident's right to recognition and respect of his personal dignity in the provision of all treatment and care;
(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;
(d) Each resident's right to an individualized treatment plan;
(e) Each resident's and family's right to participate [participation] in planning for treatment;
(f) The nature of care, procedures, and treatment that the resident [the] shall receive;
(g) The right to informed consent related to the risks, side effects, and benefits of all medications and treatment procedures used; and
(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility [if] the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice.

4. (a) The rights of residents shall be written in language which is understandable to the resident, his or her parents, custodians, or guardians and shall be posted in appropriate areas of the facility.

5. The policy and procedure concerning resident rights shall assure and protect the resident's personal privacy within the constraints of his treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;
(b) Sending and receiving mail without hindrance or censorship; and
(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

6. (a) Telephone communications with the resident's family or significant others shall be monitored only when necessary for the health, safety, and welfare of the resident.

7. The right to initiate a complaint or grievance procedure and the means for requesting a hearing or review of a complaint shall be provided in a written policy approved by the governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall include:

(a) To whom the grievance is to be addressed; and
(b) Steps to be followed for filing a complaint, grievance, or appeal.

8. The resident and his or her parent, guardian, or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, videotapes, monitors, television, movies, or photographs.

9. The policy and procedure regarding resident's rights shall ensure the resident's right to confidentiality of all information recorded in his or her record maintained by the facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

10. (a) A [The] resident shall be allowed to work for the facility only under the following conditions:

1. (a) The work is part of the Individual treatment plan;
2. (b) The work is performed voluntarily;
3. (c) The resident receives wages commensurate with the economic value of the work; and
4. (d) The work project complies with applicable law and administrative regulation; and
(b) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) Written policy [and procedure] developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully explained to each resident and the resident's parent, guardian, or custodian.

(12) A PRF [The facility] shall prohibit all cruel and unusual disciplinary measures including the following:
(a) Corporal punishment;
(b) Forced physical exercise;
(c) Forced fixed body positions;
(d) Group punishment for individual actions;
(e) Verbal abuse, ridicule, or humiliation;
(f) Denial of three (3) balanced nutritional meals per day;
(g) Denial of clothing, shelter, bedding, or personal hygiene needs;
(h) Denial of access to educational services;
(i) Denial of visitation, mail, or phone privileges for punishment;
(j) Exclusion of the resident from entry to his assigned living unit, and
(k) Restraint or exclusion as a punishment or employed for the convenience of staff.

(13) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(14) Written rules of resident conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body.

(15) Residents shall participate in the development of the rules to a reasonable and appropriate extent.

These rules shall be based on generally acceptable behavior for the resident population served.

(16) The application of disciplinary measures shall relate to the violation of established rules.

Section 8. Resident Records. (1) A PRF [The facility] shall have written policies [or procedures] concerning resident records [developed in consultation with professional staff and a registered records administrator and approved by the governing body] and

(b) [2] The facility shall maintain a written resident record on each resident, to be directly accessible to staff members caring for the resident.

(2) [3] The resident record shall contain at a minimum:
(a) Basic identifying information;
(b) Appropriate court orders or consent of appropriate family members or guardians for admission, evaluation, and treatment;
(c) A provisional or admitting diagnosis which includes a physical diagnosis, as applicable, as well as a psychiatric diagnosis;
(d) The report by the parent, guardian, or custodian of the patient's immunization status;
(e) A psychosocial assessment of the resident and his family, including
   an evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family;

2. A summary of the resident's psychosocial needs.

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, if [when] applicable;

(h) The family's, guardian's, or custodian's expectations for, and involvement in, the assessment, treatment, and continuing care of the resident;

(i) Physical health assessment, including evaluations of the following:
   1. Motor development and functioning;
   2. Sensory motor functioning;
   3. Speech, hearing, and language functioning;
   4. Visual functioning; and

3. Immunization status.

(3) [4] The resident record shall also include
(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident.

(b) Professional progress notes which shall be completed following each professional service except if [when] the service is provided daily to groups of residents, when weekly summaries may be used. Professional progress notes shall be signed and dated by the mental health professional who provided the service.

(c) Direct-care progress notes which shall record implementation of all treatment and any unusual or significant events which occur for the resident.

2. Direct-care progress notes shall be completed at least by the end of each direct-care shift and summarized weekly.

3. Direct-care notes shall be signed and dated by the direct-care staff making the entry.

(d) Special clinical justifications for the use of special and unusual treatment procedures and reports.

(e) Discharge summary.

(f) If a patient dies, the resident record shall include a summary statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.

(4) A PRF [The facility] shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:
(a) The name of the person, agency, or organization to which the information is to be disclosed;
(b) The specific information to be disclosed;
(c) The purpose of disclosure; and
(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 9. Quality Assurance. (1) A PRF [The facility] shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) A PRF [The facility] shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings.

(3) A PRF [The facility] shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or any disruptive or sexual behavior. The record should be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

Section 10. Admission Criteria. (1) A PRF [The facility] shall have written admission criteria approved by the governing body which are consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:
(a) Types of admission [crisis stabilization, long-term treatment];
(b) Age and sex of accepted;
(c) Criteria that preclude admission;
(d) Clinical needs and problems typically addressed by the facility's programs and services;
(e) Criteria for discharge; and
(f) Any preplacement requirements of the resident, his parents, guardians, custodians, or the placing agency.

(3) Residents admitted to a PRF [the facility] shall have obtained age six (6), but not attained age eighteen (18).

(2) Residents may remain in care until age twenty-one (21) if admitted by their 18th birthday.

(c) Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and
shall reflect a range no greater than five (5) years in a living unit.
(4) Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall not be admitted.

Section 11. Resident Management. (1) Intake.
(a) A PRTF [The facility] shall have written policies and procedures approved by the governing body for the intake process which addresses at a minimum the following:
1. Referral, records, and statistical data to be kept regarding applicants for residence;
2. Criteria for determining the eligibility of individuals for admission;
3. Methods used in the intake process which shall be based on the services provided by the facility and the needs of residents; and
4. Procurement of appropriate consent forms. This may include the release of educational and medical records.
(b) The intake process shall include an initial assessment of the resident performed by a mental health professional. The results of the assessment shall be explained to the parent or guardian or custodian if appropriate, and to the resident. As a condition of admission, the assessor shall conclude that:
1. The treatment required by the resident is appropriate to the intensity and restrictions of care provided by the facility; and
2. Alternatives for less-intensive and restrictive treatment are not available or accessible to the resident.
(c) The intake process shall be designed to provide at least the following information:
1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;
2. Legal, custody, and visitation orders; and
3. Proposed discharge plan and anticipated length of stay.
(d) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:
1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;
2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and
3. Preparation of the staff and residents of the facility for the new resident.
(e) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 U.S.C. 1400.

(2) Assessment.
(a) A complete evaluation and assessment shall be performed for each resident. Such evaluation includes at least [...] physical, emotional, behavioral, social, recreational, educational, legal, vocational, and nutritional needs.
(b) An initial health screening for illness, injury, and communicable disease or other immediate needs shall be conducted within twenty-four (24) hours after admission by a nurse.
(c) A physician, nurse practitioner, or physician's assistant shall conduct a physical examination of each resident within fourteen (14) days after admission. Communication to schedule the physical examination of each resident shall be initiated within twenty-four (24) hours after admission. The physical examination shall include at least [...] evaluations of the following:
1. Motor development and functioning;
2. Sensomotor functioning;
3. Speech, hearing, and language functioning;
4. Visual functioning; and
5. Immunization status. If a resident's immunization is not complete as defined in the Report of the Committee on Infectious Diseases of the American Academy of Pediatrics, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination, whichever is later.
(d) If the resident has had a complete physical examination by a qualified physician, nurse practitioner, or physician's assistant within the previous three (3) months which includes the requirements of paragraph (c) of this subsection [...], this section and if the facility obtains complete copies of the record, the physician, nurse practitioner, or physician's assistant may determine after reviewing the records and assessing the resident's physical health that a complete physical examination is not required. If that determination is made, [...], the examination performed in the previous three (3) months [that examination] may be used to meet the requirement for a physical examination in paragraph [subsection] (c) [of this section].
(e) A physician shall be responsible for assessing each resident's physical health, his need for a current examination in spite of one done in the prior three (3) months, and his need for special clinical examinations and tests within twenty-four (24) hours of admission.
(f) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and adolescents.
(g) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:
1. A history of previous emotional, behavioral, and substance abuse problems and treatment;
2. The resident's current emotional and behavioral functioning;
3. A direct psychiatric evaluation;
4. If [When] indicated, psychological assessments, including intellectual, projective, and personality testing;
5. If [When] indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and
6. An evaluation of the developmental age factors of the resident.

(3) The facility shall have an assessment procedure for the early detection of mental health problems that are life threatening, are indicative of severe personality disorder or disorganization, or may seriously affect the treatment or rehabilitation process.
(4) A social assessment of each resident shall be undertaken and include:
1. Environment and home;
2. Religion;
3. Childhood history;
4. Financial status;
5. The social, peer-group, and environmental settings from which the resident comes; and
6. The resident's family circumstances, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(f) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.
(g) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes, and interest.
(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizing, and events.
(i) For adolescents age sixteen (16) and older, a vocational assessment of the resident shall be done which includes the following:
1. Vocational history;
2. Education history, including academic and vocational training; and
3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with and attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and
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employment.
(m) If [When] appropriate, a legal assessment of the resident shall be undertaken and shall include the following:
1. A legal history; and
2. A preliminary discussion to determine the extent to which the legal situation will influence his progress in treatment and the urgency of the legal situation.
(n) Treatment plans.
(n1) Within seventy-two (72) hours following admission, a mental health professional shall develop an initial treatment plan that is based at least on an assessment of the resident's present problems, physical health, and emotional and behavioral status.
2. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.
(b) A master treatment plan shall be developed by a multidisciplinary team in conformity with 42 C.F.R. 441.156 within ten (10) days of admission for any resident remaining in treatment. It shall be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section, including a substantiated diagnosis and the short-term and long-range treatment needs, and address the specific treatment modalities required to meet the resident's needs.
1. The treatment plan shall contain specific and measurable goals for the resident to achieve.
2. The treatment plan shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.
3. The treatment plan shall specify criteria to be met for termination of treatment.
4. The treatment plan shall include any referrals necessary for services not provided directly by the facility.
5. The resident shall participate to the maximum extent feasible in the development of his treatment plan, and the [such] participation shall be documented in the resident's record.
6. The treatment plan shall specify the ways in which the resident will participate in community activities, organizations, and events.
7. The treatment plan shall address ways in which the environment for the resident is normalized.
8. A specific plan for involving the resident's family or significant others shall be included in the treatment plan.
(c) The master treatment plan and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.
(d) Progress notes.
(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include the following:
1. Documentation of implementation of the treatment plan;
2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and
3. Descriptions of each change in each of the resident's conditions.
(b) All entries involving subjective interpretation of the resident's progress shall be supplemented with a description of the actual behavior observed.
(c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, if [when] available, to include them in the resident record.
(d) The resident's progress and current status in meeting the goals and objectives of his or her treatment plan shall be regularly recorded in the resident record.
(e) Discharge planning. A PRIE [The facility] shall have written policies and procedures for discharge of residents.
(f) Discharge planning shall begin at admission and be documented in the resident record.
1. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan.
2. This plan shall be maintained in the resident's record and reviewed and updated with the master treatment plan.
(b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for any aftercare service (aftercare services), and the affected local school districts. All aftercare plans shall delineate those parties responsible for the provision of aftercare services.
(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.
(d) A facility deciding to release a resident on an unplanned basis shall:
1. Have reached the decision to release a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;
2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency copies of the resident's records and discharge summary, and/or
3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that the [such] placement reasonably meets the needs of the resident.
4. Provide a written statement explaining the reasons for discharge and the resolution of the issues.
(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:
1. Name, address, phone number, and relationship of the person to whom the resident was released;
2. Description of circumstances leading to admission of the resident to the facility;
3. Significant problems of the resident;
4. Clinical course of the resident's treatment;
5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;
6. Special clinical management requirements including psychotropic drugs;
7. Brief descriptive overview of the aftercare plan designed for the resident; and
8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.
(b6) The facility shall request periodic follow-up reports from each agency providing services to the resident in accordance with the aftercare plan, and shall be responsible for documenting the outcome of the aftercare plan as possible.

Section 12. Services. A PRIE [The facility] shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident.
Services shall include the opportunity for the resident to participate in community activities, organizations and events and shall provide a normalized environment for the resident.

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(1) Mental health services.
   (a) Mental health assessments and evaluations shall be provided as required in Section 11 of this administrative regulation.
   (b) The mental health services available through the PRTE [residential treatment facility] shall include the services listed below. These mental health services shall be provided by staff of the PRTE [residential treatment facility]:

1. Case coordination services to assure the full integration of all services provided to each resident.
2. Case coordination activities shall include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan.

(b) Planned on-site verbal therapies including formal individual, family, and group therapies.

(c) These therapies shall include psychotherapy and other face-to-face verbal contacts between staff and the resident which are planned to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit.

(d) Verbal contacts that are incidental to other activities are excluded from this service.

3. Task and skill training to enhance a resident's age-appropriate skills necessary to facilitate the resident's ability to care for himself and to function effectively in community settings.

(b) Task and skill training activities shall include homemaker, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Physical health services.

(a) The physical health services available through the PRTE [residential treatment facility] shall include the services listed below. Physical health services may be provided directly by the facility or may be provided by written agreement:

1. Assessments and evaluations as required in Section 11 of this administrative regulation;
2. Diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;
3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;
4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;
5. Health and sex education; and
6. An ongoing immunization program.

(b) If [when] physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:
1. Referral of residents;
2. Qualifications of staff providing services;
3. Exchange of clinical information; and

(3) Dietary services.

(a) A PRTE [facility] shall have written policies and procedures approved by the governing body for the provision of dietetic services for staff and residents which may be provided directly by the facility staff or through written contractual agreement.

(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietician service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.

(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a qualified dietetic registered by the Commission on Dietetic Registration and employed by the facility as a staff member or consultant.

(d) The food shall be served to residents and staff in a common eating place and:

1. Shall account for the special food needs and tastes of residents;
2. Shall not be withheld as punishment; and
3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

(e) Residents shall participate in the preparation and serving of food as appropriate.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.

2. Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.

(4) Emergency services.

(a) A PRTE [facility] shall provide for the prompt notification of the resident's parents, guardian, or custodian in case of serious illness, injury, surgery, or death.

(b) The facility shall provide or arrange for the training of all direct-care and professional staff in first aid and CPR.

(c) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather.

2. The plan shall be posted.

3. Staff shall be trained in properly using a fire extinguisher, reporting a fire, extinguishing a small fire, and in evacuation from the building.

4. Fire drills shall be practiced in accordance with state fire administrative regulations.

(d) The facility shall have written procedures to be followed by staff if [in the event of] a psychiatric, medical, or dental emergency of a resident occurs that specifies:

1. Notification of designated member of the facility's chain of command;
2. Designation of staff person who shall decide to refer resident to outside treatment resources;
3. Notification of resident's parent, guardian, or custodian;
4. Transportation to be used;
5. Staff member to accompany resident;
6. Necessary consent and referral forms to accompany resident; and
7. Name, location, and telephone of designated treatment resources.

(e) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:

1. Licensed physician and an alternate designee;
2. Licensed dentist and an alternate designee;
3. Licensed hospital; and
4. Licensed hospital with an accredited psychiatric unit.

(5) Pharmacy services. A PRTE [facility] shall have written policies and procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the following requirements:

(a) Medications shall be administered by a registered nurse, pharmacist, or dentist, except if administered by [in the case of] a licensed practical nurse, certified medication aide, or direct care staff under the supervision of a registered nurse.

2. Direct care staff who administer medications shall have successfully completed [sic] [aie] medicine administration course approved by the Kentucky Board of Nursing [see use in child-care facility]..

(b) Medications shall be administered by a licensed nurse, or a pharmacist, or dentist if [when] applicable, or advanced registered nurse practitioner as authorized in KRS 314.011(6) and 314.042(8), or therapeutically-certified optometrist as authorized in KRS 320.240(14). Telephone orders for medications shall be given only to licensed registered nurses or a pharmacist and signed by the physician, dentist, advanced registered nurse practitioner or therapeutically-certified optometrist within twenty-four (24) hours from the time the order is given;

(c) Psychotropic medications shall be prescribed only when clinically indicated as one (1) facet of a program of therapy. The facility shall ensure that no stimulant or psychotropic medication is administered solely for the purpose of program management or control, and that no medication is prescribed for the purposes of experimentation or research;

(d) All medications shall require "stop orders";
(f) There shall be a systematic method for prescribing, ordering, receiving, storing, dispensing, administering, distributing and accounting for all medications;

(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles;

(h) Self-administration of medication shall be permitted only when specifically ordered by the responsible physician and supervised by a member of the professional staff or a mental health associate. Drugs to be self-administered shall be stored in a secured area and be made available to the resident at the time of administration;

(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be administered;

(j) Drugs brought into the facility by residents shall not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs shall be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.

6. Education and vocational services.

(a) Educational and vocational services available through a PRTE (the facility) shall include the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular education, vocational education, and special education as appropriate to meet the needs of the residents.

1. Educational services may be provided by:
   a. The facility;
   b. The local school district in which the facility is located; or
   c. A nonpublic school program which is specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

2. If the educational services are provided by the facility, the school program shall be specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

3. Educational services provided by a local school district may be provided within the facility or within the local school district.

4. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.

5. In any case, education services approved by the Department of Education shall be available either on the same site or in close physical proximity to the PRTE (residential treatment facility).

(b) [When the education services are not provided directly by the facility, there shall be a written plan for the provision of education services. The education provider shall be a state education department-approved program. The written plan shall, at a minimum, address:

1. Qualifications of staff providing educational services;
2. Participation of educational and vocational staff in the treatment planning process;
3. Access by staff of the facility to educational and vocational programs and records; and

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's master treatment plan.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 U.S.C. 1400.

(e) The facility shall ensure that education services are developed and implemented with input from the child's education staff in conjunction with the master treatment plan and meet the following requirements:

1. The resident's teacher shall be a member of the multidisciplinary team, when possible.
2. Each resident's master treatment plan shall include formal academic goals for remediation and continuing education.

(f) Each resident eligible for special education services to the handicapped shall have treatment activities developed by the multidisciplinary team, which may be incorporated into the individualized treatment plan developed by the local school district.

(g) The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate.

(h) The program director or designee shall request an invitation to attend all individualized treatment plan meetings.

(i) The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the master treatment plan.

2. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who may be a full-time or part-time employee of the facility or a consultant.

3. Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

7. Activity services.

(a) A daily schedule of planned recreational activities shall be prepared for the approval of the clinical director prior to implementation of the schedule.

1. The schedule shall be for normal waking hours that residents are not in school, or in active treatment.

2. The schedule shall include a full range of activities including physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on non-school days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(c) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

8. Speech, language, and hearing services. A PRTE (the facility) shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

(a) Referral of residents;
(b) Qualifications of staff providing services;
(c) Exchange of clinical information; and
(d) Financial arrangements.

Section 13. Special Treatment Procedures. (1) Special treatment procedures include procedures such as restraint or seclusion [and holding] which may have abuse potential or be life threatening. Special treatment shall be used only as a means to prevent a resident from injuring himself/herself, or others [or to prevent serious disruption of the therapeutic environment].

(2) The use of mechanical restraint shall be prohibited in a PRTE.

(3) Special treatment procedures shall not be used as punishment or as a convenience of staff.

(4) [43] Special treatment procedures may only be:
(a) Ordered by a [be used only by] trained, clinically-privileged staff person acting within his or her scope of practice; and
(b) Carried out by trained staff.

(5) A PRTE (the facility) shall have a written plan approved by the governing body for the use of special treatment procedures...
which at a minimum meet the following requirements:
(a) Any use of special treatment procedures shall require clinical justification;
(b) A rationale and the clinical indications for the use of special treatment procedures shall be clearly stated in the resident's record for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques;
(c) The plan shall specify the length of time for which a specific approval remains a resident's treating physician;
(d) The plan shall specify the length of time the special treatment procedure may be utilized; and
(e) The plan shall specify when continued or repeated special treatment procedures shall trigger multidisciplinary team review.

(6) If an emergency situation requires restraint or seclusion and a practitioner authorized to order restraint or seclusion is not available in a PRTF, a verbal order for restraint and seclusion may be obtained and carried out under the following conditions:
(a) The verbal order shall be given by a practitioner, as authorized by the facility, who is acting within his or her scope of practice;
(b) The verbal order shall be received by a practitioner, as authorized by the facility, who is acting within his or her scope of practice;
(c) The ordering practitioner shall be immediately available by telephone for consultation during the time that restraint or seclusion is being carried out; and
(d) The verbal order shall be countersigned by the ordering practitioner within seven (7) days of date that the order was given.

(7) For a nonemergency situation, restraint or seclusion may be carried out only after being ordered by:
(a) A resident's treating physician;
(b) A practitioner acting within his or her scope of practice, if the resident's treating physician is not available. The practitioner shall:

1. Contact the resident's treating physician as soon as possible and inform him or her of the order for restraint or seclusion; and
2. annotate the resident's record with date and time of the contact with the resident's treating physician.

(3) An order for restraint or seclusion shall not exceed:
(a) The duration of the emergency safety situation;
(b) Four (4) hours for a resident eighteen (18) to twenty-one (21) years of age;
(c) Two (2) hours for a resident nine (9) to seventeen (17) years of age; or
(d) One (1) hour for a resident under nine (9) years of age.

(9) If an emergency safety situation exists beyond the time limit for the use of restraint or seclusion, a new order for restraint or seclusion shall be obtained.

(10) A resident that is placed in restraint or seclusion shall receive a face-to-face evaluation to determine physical and psychological well-being. The evaluation shall be conducted:
(a) By a practitioner authorized by the facility and acting within his or her scope of practice; and
(b) Within one (1) hour of restraint or seclusion being initiated.

(11) Staff who implement special treatment procedures shall:
(a) Have documented training in the proper use of the procedures used;
(b) Be certified in physical management by a nationally recognized training program in which certification is obtained through skilled-out testing; and
(c) Receive annual training and recertification in crisis intervention and behavior management.

(12) Staff authorized by a PRTF shall:
(a) Be present, physically present with a resident being restrained;
(b) Monitor the physical and psychological well being of a resident being restrained; and
(c) Document observations of, and actions taken for, a resident being restrained.

(13) After a restraint is removed from a resident, a practitioner that is authorized by a PRTF and acting within his or her scope of practice shall conduct a face-to-face evaluation of the resident's physical and psychological well-being.

(14) Staff shall provide constant visual attention to a resident who is in seclusion, through physical presence or a window.

(15) Staff authorized by a PRTF shall:
(a) Monitor the physical and psychological well being of the resident;
(b) Ensure that a resident in seclusion is provided with appropriate attention in regard to:
1. Regular meals;
2. Hydration;
3. Bathing; and
4. Use of the toilet; and
(c) Document observations of, and actions taken for, a resident in restraint every fifteen (15) minutes.

(16) At no time may a procedure shall not be used at any time in a manner that causes undue physical discomfort, harm, or pain to a resident.

(17) A PRTF shall not use extraordinary risk procedures including, but not limited to, experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, and investigational and experimental drugs.

(18) Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment services.

(a) The proposed unusual treatment shall be reviewed and interpreted by the child's psychiatrist addressing the rationale for use, methods to be used, specific time to be used, who will provide the treatment, and the methods that will be used to evaluate the efficacy of the treatment.
(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian, or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

(19) The clinical director or designee shall review all uses of special treatment procedures on a daily basis. The daily review shall include an evaluation for the possibility of unusual or unwarranted patterns of use. If a restraint or seclusion may be ordered or carried out only after the physician who is authorizing the use of the procedure has conducted a clinical assessment of the resident.

(20) Each written order for restraint or seclusion shall be time limited and shall not exceed twenty-four (24) hours. No PRN orders for restraint or seclusion may be written.

(21) Restraint or seclusion may be utilized in an emergency by trained, clinically privileged staff. The emergency implementation of restraint or seclusion shall not exceed thirty (30) minutes at which time a physician-staff member's oral order is required if use of the procedure is to continue. The physician's written order to confirm restraint or seclusion shall be entered in the resident's record as soon as possible, but not more than twenty-four (24) hours after the implementation of the procedure.

(22) Staff who implement special treatment procedures shall have documented training in the proper use of the procedures used and shall be certified in physical management by a nationally recognized training program in which certification is obtained through skilled-out testing.

(23) A staff member shall be present, physically present with a resident in restraint, and attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(24) A staff member shall always be in the seclusion room with a resident twelve (12) years of age or under so long as the staff member is not placed in undue physical danger due to the resident's relative size and strength of the resident who is in seclusion. Attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(25) Conlain visual attention through physical presence, remote video, or window shall be paid to an adolescent who is in seclusion and over twelve (12) years of age or a resident who is under twelve (12) years of age if the resident is placed in a physical danger due to the resident's relative size and strength. A staff member shall check the resident's breathing and talk to the resident every fifteen (15) minutes and shall attend to
the resident's regular mode, bathing, and use of the toilet. This attention shall be documented in the resident's record.

(42) At no time may a procedure be used in a manner that causes undue physical discomfort, harm, or pain to a resident.

(43) All use of special treatment procedures shall be reviewed on a daily basis by the clinical director and evaluated by him for the possibility of unusual or unwarranted patterns of use.

(44) A facility shall not use extraordinary-risk procedures, including, but not limited to, experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapy, behavior modification procedures that use painful stimuli, unusual medications, and investigational and experimental drugs.

(45) Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:

(a) The proposed unusual treatment shall be reviewed and interpreted by one (1) or more persons legally qualified to prescribe treatment addressing the rationale for use, methods to be used, specified time to be used, who will provide the treatment, and the methods that will be used to evaluate the efficacy of the treatment.

(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and parent, guardian, or custodian, prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

Section 14. Housekeeping Services. (1) A PRTE [The facility] shall have policies and procedures for all services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the following:

(a) The use, cleaning, and care of equipment;

(b) Assuring the proper use of housekeeping and cleaning supplies;

(c) Evaluating the effectiveness of cleaning;

(d) The role of the facility staff in maintaining a clean environment.

(2) A laundry service shall be provided by a PRTE [The facility] or through contractual agreement.

(3) Pest control shall be provided by a PRTE [The facility] or through contractual agreement.

Section 15. Infection Control. (1) Because infections acquired in a PRTE [facility] or brought into a PRTE [facility] from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among residents and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) A PRTE [The facility] shall document that in-service education in infection prevention and control is provided to all services and program components.

ROBERT J. BENVENUTI, III, Esq., Inspector General
JAMES W. HOST, Jr., M.D., Secretary
DUANE L. KILTY, Jr., Ph.D., Undersecretary
APPROVED BY AGENCY: August 11, 2005
FILED WITH LRC: August 12, 2005 at 10 a.m.
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CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(As Amended at ARRS, September 13, 2005)


RELATES TO: KRS 216B.010-216B.130, 216B.450-216B.459, 216B.950
STATUTORY AUTHORITY. KRS 216B.042, 216B.105, EO 2004-726 [96-882]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Health and Family Services regulate health facilities and services. This administrative regulation establishes (provides for the minimum licensure requirements regarding) physical plant requirements for psychiatric residential treatment facilities. This administrative regulation allows (to-intended-to-allow) existing facilities or residential occupancies, with modifications, to be licensed in this category of health care. [Executive Order 06-682, effective July 2, 1999, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions (1) "Certificate of need" is defined in KRS 216B.015(1)[216B.015(1)] (4)
(2) [as defined in KRS 216B.450] (means a completely detached building]
(3) [as defined in KRS 216B.450] (means a completely detached building]
(4) [as defined in KRS 216B.450] (means a completely detached building]
(5) [as defined in KRS 216B.450] (means a completely detached building]
(6) [as defined in KRS 216B.450] (means a completely detached building]
(7) [as defined in KRS 216B.450] (means a completely detached building]
(8) [as defined in KRS 216B.450] (means a completely detached building]

Section 2. Preparation and Approval of Plans and Specifications. After receiving a certificate of need the following procedures shall be followed:

(1) Before construction shall begin for the erection of new buildings or alterations to existing buildings or any changes in facilities, the licensee or applicant shall submit plans in the detail specified in Section 3 of this administrative regulation to the licensure agency for approval.

(2) All architectural, mechanical, and electrical drawings shall bear either the seal of a professional engineer registered in the Commonwealth of Kentucky or an architect registered in the Commonwealth of Kentucky.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) All [such] plans and specifications shall be approved by the licensure agency prior to commencement of construction of new buildings or alterations of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code, 815 KAR 7-120, shall be submitted together with architectural or engineering stamps as required by KRS Chapters 322 and 323, to the Office [Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. Plans and specifications shall be approved by the Office [Department of Housing, Buildings and Construction and appropriate local building permits shall be obtained prior to commencement of construction.

(6) Access to the work. Representatives of the appropriate state agencies shall have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for that [such] access and inspection.

Section 3. Compliance with Building Codes, Ordinances and Administrative Regulations.

(1) General. [The PRTE] shall be in compliance with building codes, ordinances, and administrative regulations which are en-
forced by city, county, or state jurisdictions.

(2) The following requirements shall apply if [where applicable and as adopted by the respective agency:
   (a) Requirements for fire safety pursuant to 815 KAR 10:060 [060].
   (b) Requirements for plumbing pursuant to 815 KAR 20:010 through 20:195 [494].
   (c) Requirements for elevators pursuant to 815 KAR 4:010 through 4:025.
   (d) Requirements for making buildings and facilities accessible to and usable by persons with disabilities pursuant to 28 C.F.R. Part 36.

(3) Prior to occupancy, [the] facility shall have final approval from appropriate agencies.

(4) All facilities shall be currently approved by the Office [Department] of Housing, Buildings and Construction before licensure and relicensure is granted by the licensing agency.

Section 4. Facility Requirements and Special Conditions. (1) Facilities shall be accessible to and usable by persons with disabilities in compliance with the provisions of the Americans With Disabilities Act, 42 U.S.C. 12101 et seq.
   (2) Access to a facility shall be by means of a paved or gravel roadway which shall be available for use by traffic prior to a license being issued to a facility for occupancy.
   (3) A copy of the narrative program for each project shall be provided to the licensure agency by the sponsor which describes the functional space requirements, staffing patterns, departmental relationships, and other basic information relating to the fulfillment of the objectives of the facility.
   (4) The number and types of rooms of the diagnostic, clinical, and administrative facilities to be provided shall be determined by the services to be provided and the estimated patient load as described in the narrative program.

Section 5. Living Unit. A living unit shall be located within a single building and shall include:
   (1) Bedrooms.
      (a) Bedrooms shall not be used to sleep more than two (2) children and shall have clearances of at least three (3) feet between each bed, and four (4) feet from the foot of the beds.
      (b) Bedrooms shall be equipped with a bed for each resident. Beds shall be not less than thirty-six (36) inches wide nor less than five (5) feet in length, and shall be long and wide enough to accommodate the resident’s size. A mattress cover, two (2) sheets, and a pillow [and a bed] bed covering as is required to keep the resident comfortable [will be] shall be provided for each bed. Rubber or impervious sheets shall be placed over the mattress cover [where appropriate]. Each bed shall be equipped with a support mechanism and a clean mattress.
   (c) Beds occupied by residents shall be placed so that no child will experience discomfort because of proximity to radiators, heat outlets, or exposure to drafts.
   (d) There shall be separate sleeping quarters for males and females.
   (e) Residents shall have bedrooms, detached buildings, or other enclosures which have not been previously inspected and approved for residential use by the licensing agency and the Office [Department] of Housing, Buildings and Construction.
   (f) Bedrooms shall not be located more than sixty (60) feet from the duty stations, and the doors shall be within visual contact with the duty station.
   (g) A room shall not be used as a resident bedroom if the access is through another resident’s bedroom.
   (h) Bathrooms.
      (a) Each living unit shall have a minimum of one (1) wash basin with hot and cold water, one (1) flush toilet, and one (1) bath or shower with hot and cold water for every five (5) [four (4)] residents, or fraction thereof, residing within the living unit. (Separate toilet and bath/shower facilities shall be provided for each sex.)
      (b) Each bathroom shall be supplied with toilet paper, towels, soap, and washcloths.
      (c) If [Where] more than one (1) toilet is provided in the same room, each toilet shall be partitioned and include a door capable of remaining closed which affords full visual privacy.
      (d) Bathrooms and showers shall have enclosures or screens for individual privacy. Shower heads shall be of institutional safety type.
      (e) At least one (1) bathing facility shall have space for a wheelchair resident with an assisting attendant. It may serve both sexes.
      (f) Each bathroom shall contain at least one (1) nondisturbing mirror secured to the wall at a convenient height for both individuals with disabilities and other residents.
      (g) The bathrooms shall not be constructed to create a thoroughfare bathroom to bedrooms. The bathroom shall only have one (1) door.
      (3) Wardrobes or closet for each resident. Minimum clear dimensions: one (1) foot and ten (10) inches deep by one (1) foot and eight (8) inches wide with full length hanging space; provide clothes rod and shelf. Additional areas shall be provided for storage of resident’s winter coats, raincoats and other bulky articles of clothing, etc. Those areas shall be key-locked and under staff control.
      (4) Desk and chair for each resident. Minimum clear dimensions [for the desk: one (1) foot and six (6) inches deep by three (3) feet and wide by two (2) feet] of a facility.
      (5) Window. Degree of security required shall be as determined by the program. Where glass fragments could [may] create a hazard, safety glazing or other appropriate security features shall be incorporated.
      (6) If a staff call system is included, provisions shall be made to permit removal of call buttons or use of blank plates as appropriate.
      (7) Bedrooms shall not be located more than sixty (60) feet from the duty station, and the doors shall be within visual contact with the duty station.
      (8) Rooms shall not be used as a resident bedroom where the access is through another resident’s bedroom.
   (1) [15] Resident’s living, dining, and recreation area.
      (a) The total area provided for living and recreation shall be not less than forty (40) square feet per resident.
      (b) The total area provided [providing for] dining shall not be less than fifteen (15) square feet per resident.
      (c) The living area shall provide comfortable seating for at least ten (10) persons.
      (d) Indoor recreation equipment in good condition and appropriate for the ages of residents on the living unit shall be provided and maintained.
      (e) Storage shall be provided for recreational equipment and supplies. [Such as walls cabinets or closets.]
      (f) The facility shall provide space for outdoor recreation activities for residents. The outdoor area shall be free from litter, glass and other objects which pose undue safety hazards to residents.
      (g) Outdoor recreation equipment in good condition and appropriate for the age of the residents shall be provided and maintained.
   (2) [49] Service areas for each living unit. The size and location of each area shall [will] depend on the number of residents served and shall include:
      (a) A duty station. Adequate space for charting and other required administrative functions shall be provided.
      (b) A medicine area.
         1. Provision shall be made for twenty-four (24) hours [hours] distribution of medication to residents and (1) this may be from a medicare preparation room or unit, a self-contained medication dispensing unit, or by another approved system.
         2. A medicine preparation room or unit is used, it shall be under the treatment staff’s visual control and contain a work counter, refrigerator, sink and locked storage for biocidal and drugs.
         3. If a medicine dispensing unit is used, it may be located at the duty station, in a clean workroom, or in an alcove under direct control of the treatment or pharmacy staff.
      (4) [50] Controlled substances shall be kept under double lock.
      (c) Clean linen storage shall be kept in an enclosed room.
      (d) [44] Each living unit shall be equipped with a working sink, stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.
      (12) A living unit shall have a maximum of eight (8) resi-
Section 6. Kitchen Area. If a commercial service is used or meals are provided by an adjacent facility, dietary areas and equipment shall be designed to accommodate the requirements for sanitary, efficient and safe storage, processing, and handling; otherwise the following shall be provided:

(1) Food serving facilities to accommodate residents and staff.
(2) Refrigerated storage to accommodate a three (3) day supply minimum.
(3) Dry storage to accommodate a three (3) day supply minimum.
(4) Janitor's closet. Storage for housekeeping supplies and equipment. A locked area shall be provided for hazardous materials.

Section 7. Administration Area. Sufficient space shall be allotted for administrative operations.

Section 8. Consultation and Visitation Rooms. Professional consultation rooms shall be provided which provide for the privacy and dignity of the patient during interview, examination, treatment, and visitation.

Section 9. Pharmacy or Drug Area. There shall be adequate facilities for the safe storage and handling of pharmaceuticals including double locking of controlled substances and refrigeration for biologicals and drugs which require refrigeration.

Section 10. Seclusion Room. (1) A seclusion room may be provided. [The room shall be located in a manner affording direct observation of the patient by the nursing staff.]

2. A seclusion room:
   (a) [The room shall be completely padded and be constructed to minimize the resident's hiding, escape, injury or suicide; and]
   (b) Shall be used only [The seclusion room is intended for short-term (short-term) occupancy by residents who may have become violent or suicidal.]
(3) Special fixtures, hardware, furniture or other items which might potentially endanger the safety of the secluded resident shall not be placed in a seclusion room.
(4) Electrical switches, receptacles, etc. shall not be provided in a seclusion room.
(5) A seclusion room door [Doors] shall swing outward and have provisions for staff observation while maintaining privacy from the public and other patients.
(6) A seclusion room [The room] shall be designed to allow for the constant visual inspection of the entire room.

Section 11. Storage and Service Areas. The following shall be included:

(1) Sufficient storage space shall be provided.
(2) Engineering service and equipment areas. The following shall be provided if [where] applicable:
   (a) Storage room for housekeeping equipment. Not required if space is available in janitor's closets or elsewhere, [b];
   (b) Refuse area, for holding trash prior to disposal, shall be located convenient to service entrance.

Section 12. Details and Finishes. A high degree of safety for the occupants is minimized the incidence of accidents shall be provided. Hazards such as sharp corners shall be avoided. All details and finishes shall meet the following requirements:

1. Details:
   (a) All doors opening onto corridors shall be swing-type except elevator doors. Alcoves and similar spaces which generally do not require doors shall be [are] excluded from this requirement.
   (b) All doors to resident room toilet rooms shall swing outward or shall be equipped with hardware which will permit access in any emergency.
   (c) Thresholds and expansion joint covers, if used, shall be flush with the floor.
   (d) Towel rack or dispensers shall be provided at all lavatories and sinks used for handwashing.
   (e) Ceiling heights shall not be less than seven (7) feet and six (6) inches.
   (f) Finishes:

2. Floors [generally] shall be easily cleanable and shall have the wear resistance appropriate for the location involved. Floors in kitchen and related spaces shall be waterproof and grease-proof. In all areas where floors are subject to wetting, they shall have a nonslip finish.
3. Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.
4. Walls [generally] shall be washable and, in the immediate area of plumbing fixtures, the finish shall be moisture-proof. Wall bases in dietary areas shall be free of spaces that can harbor insects.
5. Ceilings shall be maintained for cleanliness [generally shall be washable or easily cleanable. The requirement does not apply to mechanical and building equipment rooms, shops and similar spaces].
6. Rooms containing heat-producing equipment such as laundries and food preparation areas shall be insulated and ventilated to prevent any floor surface from exceeding a temperature of ten (10) degrees Fahrenheit above the ambient room temperature.

Section 13. Construction. (1) Foundations shall rest on natural solid ground if a satisfactory soil is available at reasonable depths.
2. Proper soil bearing values shall be established in accordance with recognized standards.
(3) If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 14. Mechanical Requirements. (1) Steam and hot water systems. If boilers are provided in residential treatment facilities the design and installation shall comply with 815 KAR 15:010 through 15:080.
(2) Temperature:
   (a) A minimum temperature of sixty-eight (68) degrees Fahrenheit shall be provided for in occupied areas in winter conditions.
   (b) A maximum temperature of eighty-five (85) degrees Fahrenheit shall be provided for in occupied areas in summer conditions.
(3) Plumbing and other piping systems.
   (a) All showers and bathtubs shall be equipped with a temperature control device which controls hot water at a maximum temperature of 110 degrees Fahrenheit.
   (b) Fixtures used in the dietary area, the clean work room and medi/ prep area shall be trimmed with valves which can be operated without the use of hands.
   (c) If [Where] blade handle controls [handles] are used as valves for this purpose, they shall be approximately four (4) inches in length.
   (d) The Fixtures shall be installed to provide adequate side clearances for proper use of the blade handles.
(4) Water supply systems.
   (a) A water supply system shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen (15) pounds per square inch during maximum demand periods.
   (b) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.
   (c) Hot, cold and chilled water piping and waste piping on which condensation may occur shall be insulated. Insulation of cold and chilled water lines shall include an exterior barrier.
   (d) Backflow preventers (vacuum breakers) shall be installed on hose bibs and on all fixtures to which hoses or tubing can be attached such as janitor's sinks and bedpan flushing attachments.
   (e) Hot water distribution systems shall be arranged to provide hot water at each fixture at all times.
   (f) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of, or condensation.
from necessary overhead piping systems.

(5) Hot water heaters and tanks.
(a) The hot water heating equipment shall have sufficient capacity to supply the water at the temperature and amounts indicated below:

<table>
<thead>
<tr>
<th>Gal/hr/bed</th>
<th>Temp (Degrees Fahrenheit)</th>
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<tbody>
<tr>
<td>6 1/2</td>
<td>100-120 (140)</td>
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(b) A storage tank, or tanks if necessary, [storage tank(s)] shall be provided and shall be fabricated of corrosion-resistant metal, or have noncorrosive lining.

(6) Plumbing approval. Prior to licensure and relicensure, all specifications shall be approved by the Kentucky Division of Plumbing, Office [Department] of Housing, Buildings and Construction.

Section 15. Electrical Requirements. (1) General. Electrical requirements of the Kentucky Building Code shall apply if [where] applicable.

(2) The wiring in each home shall be inspected by a certified electrical inspector and a certificate of approval shall be issued [to the facility] prior to occupancy: exceed [however], the wiring in existing buildings shall be approved by a certified electrical inspector only if [where] the building has not been previously so approved for health care occupancy or if [where] the State Fire Marshal finds that a hazardous condition exists.

(3) Switchboard and power panel. All breakers and switches shall be indexed.

(4) Lighting.
(a) All spaces occupied by people, machinery, and equipment within buildings, and the corresponding approaches [thereof], and parking lots shall have electric lighting.
(b) Residents' bedrooms shall have general lighting.
   1. A reading light shall be provided for each resident if [when] appropriate.
   2. Residents' reading lights and other fixed lights not switched at the door shall have switch controls convenient for use at the luminary.

(5) Receptacles (convenience outlets).
(a) Bedroom. Each resident bedroom shall have duplex receptacles as follows:
   1. One (1) side of the head of each bed; receptacles for luminaries, television, and motorized beds, if used, and one (1) receptacle on another wall.
   2. Receptacles shall be of a safety type or protected with five (5) milliampere ground fault interrupters.
(b) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of ends of corridors. Receptacles shall be of a safety type or protected with five (5) milliampere ground fault interrupters.

ROBERT J. BENVENUTI, III, Esq., Inspector General
JAMES W. HOST, Jr., M.D., Secretary
DUANE L. KILTY, Jr., Ph.D., Undersecretary
APPROVED BY AGENCY: April 26, 2005
FILED WITH LRC: May 9, 2005 at 4 p.m.
CONTACT PERSON: CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Disability Services
(As Amended at ARRS, September 12, 2005)

907 KAR 1:031 Payments for home health services.

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)(f), EQ-2004-726

NECESSITY, FUNCTION, AND CONFORMITY: [EQ-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Kentucky Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for home health agency services that are provided to Kentucky's Medicaid-eligible recipients.

Section 1. Definitions. (1) "Allowable cost" means that portion of the home health agency's cost that shall be allowed by the department in establishing reimbursement.
(2) "Cost report" means the Annual Medicaid Home Health/HCB Cost Report.
(3) "Cost report instructions" means the Annual Medicaid Home Health/HCB Cost Report Instructions.
(4) "Department" means the Department for Medicaid Services or its designee.
(5) "Home health agency" or "HHA" means an agency defined pursuant to 42 C.F.R. 440.70(d).
(6) "Interim rate" means a rate set for a provider for tentative reimbursement, based on reasonable allowable costs of providing a covered service, which may result in reimbursement adjustments after an audit or review determines the actual allowable cost during an accounting period.
(7) "Medicaid upper limit" means the maximum amount the Medicaid Program shall reimburse, on a facility-by-facility basis, for a unit of service.
(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
(9) "Medicare upper limit" means the maximum reimbursement amount allowed by Medicare specific to:
(a) Each Medicare participating provider;
(b) Each category of service; and
(c) A unit of service.
(10) "Necessary function" means that if an owner of an agency had not provided the services pertinent to the operation of the HHA, the facility would have had to employ another person to perform the service.
(11) "Owner" means a person or a related family member with a cumulative ownership interest of five (5) percent or more.
(12) "Projected cost report" means an Annual Medicaid Home Health/HCB Cost Report that reflects costs that can reasonably be expected to be incurred by a provider for a specific period of time ending in the future.
(13) "Public agency" means an agency operated by a federal, state, county, city or other local governmental agency or instrumentality.
(14) "Rate year" means a twelve (12) month period beginning July 1 and ending the following June 30.
(15) "Related family member" means:
(a) Husband or wife;
(b) Natural or adoptive parent, child, or sibling;
(c) Stepparent, stepchild, stepbrother, stepsister;
(d) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law;
(e) Grandparent or grandchild;
(f) Spouse of grandparent or grandchild;
(g) Aunt or uncle, or
(h) Spouse of aunt or uncle.
(16) "Settled" or "settlement" means an amount by which a provider's interim Medicaid payment for a specified period of time is adjusted based on an audited or desk reviewed cost report for that same period of time.
(17) "Uniform desk review" or "UDR" means an analysis of a provider's Annual Medicaid Home Health/HCB Cost Report to de-
termine if the data is adequate, complete, accurate, and reasonable.

"Usual and customary charge" means the uniform amount which a medical provider charges the general public for a specific service or procedure.

Section 2. Reimbursement Requirement. A home health service shall be provided in accordance with 907 KAR 1:030 to be eligible for reimbursement.

Section 3. Payment to an In-state HHA. (1) Except as provided in Section 15 of this administrative regulation, the department shall reimburse a Medicaid participating In-state HHA on the basis of an interim rate established pursuant to subsection (2) of this section for the following services:
(a) Speech therapy;
(b) Physical therapy;
(c) Occupational therapy;
(d) Medical social services;
(e) Home health aide services; and
(f) Skilled nursing services.
(2) The interim rate for a service pursuant to subsection (1) of this section shall be determined for each individual HHA as follows:
(a) The department shall use cost data for each category of service from an HHA's most recent available Annual Medicaid Home Health/HCB Cost Report as of May 31 immediately preceding the rate year to set the interim rate;
(b) Medicaid specific data for units of service shall be adjusted using the Medicaid paid claims data;
(c) Total cost data shall be increased for inflation using the most recent available HHA Market Basket National Forecast, as published by Standard and Poor's; by:
(1) Trending the total cost data to the beginning of a rate year, and
(2) Indexing cost data established pursuant to subparagraph 1 of this paragraph for inflationary cost increases projected to occur during the rate year;
(d) An average unit cost for a category of service shall be established by dividing the indexed cost established pursuant to paragraph (c)(2) of this subsection by the total number of units of service that are reflected in the cost report pursuant to paragraph (a) of this subsection;
(e) If a nonpublicly-operated HHA is eligible to receive a cost containment incentive payment pursuant to Section 5 of this administrative regulation, the department shall determine the "average unit cost plus incentive" by adding the "incentive payment per visit amount" pursuant to Section 5(1) of this administrative regulation to the average unit cost established pursuant to paragraph (d) of this subsection;
(f) The interim rate for a publicly-operated HHA shall be the lesser of:
1. The average unit cost pursuant to paragraph (d) of this subsection; or
2. The Medicare upper limit as issued to the provider through a Medicare letter; and
(g) The interim rate for a nonpublicly-operated HHA shall be the lesser of:
1. Maximum average unit cost as established pursuant to paragraph (d) or (e) of this subsection that the provider is eligible to receive;
2. Medicare upper limit pursuant to Section 7 of this administrative regulation; or
(3) The department shall establish an interim payment not to exceed the allowable billed charge for an item listed in paragraphs (a) and (b) of this subsection by multiplying the provider's total cost to charge ratio for the item as reflected in the provider's most recent available cost report as of May 31 immediately preceding the rate year by the provider's billed charge for:
(a) Disposable medical supplies; and
(b) Enteral nutritional products.
(4) For a facility whose fiscal year ended on or before May 31, 2003, within eighteen (18) months following the end of the facility's fiscal year, payments made pursuant to subsections (2) and (3) of this section shall be:
(a) Settled to the lesser of the:
1. Allowable Medicaid cost, as established in an HHA cost report that the department has:
   a. Audited; or
   b. Desk reviewed; or
2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C.F.R. 413.13(f) shall be settled pursuant to paragraph (a) of this subsection; and
(b) Settled utilizing aggregation of costs in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions.
(5) For a facility whose fiscal year ended on or after June 30, 2003, within eighteen (18) months following the end of the facility's fiscal year, payments made pursuant to subsection (3) of this section shall be:
(a) Settled to the lesser of:
1. Allowable Medicaid cost, as established by the Kentucky Medicaid Medical Supply Cost Settlement Worksheet, that the department has:
   a. Audited; or
   b. Desk reviewed; or
2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C.F.R. 413.13(f) shall be settled pursuant to paragraph (a) of this subsection; and
(b) Settled utilizing aggregation of costs in accordance with the Kentucky Medicaid Medical Supply Cost Settlement Worksheet Instructions.
(6) If a settlement pursuant to subsection (4) or (5) of this section indicates that the department has overpaid a provider, the excess payment to the provider shall be recovered pursuant to 907 KAR 1:071, Section 2.
(b) If a settlement pursuant to subsection (4) or (5) of this section indicates that the department has underpaid a provider, a payout shall be issued to the provider through the MMIS during the next cycle following the discovery of the underpayment.

Section 4. Payment to a New In-state HHA. (1) An HHA that undergoes a change of ownership during a rate year shall continue to be reimbursed at the rate established for the previous owner for the remainder of the rate year.
(2) An HHA pursuant to subsection (1) of this section shall be reimbursed pursuant to Section 3 of this administrative regulation after the provider submits a cost report pursuant to Section 8 of this administrative regulation.
(3) An HHA that had not previously participated in the Medicaid Program under the current ownership or a previous ownership during the rate year shall be:
(a) Considered a new HHA; and
(b) Reimbursed at the interim rate equal to the lesser of:
1. Seventy (70) percent of the current Medicaid upper limit as established pursuant to Section 7(2)(e) of this administrative regulation; or
2. The current Medicare upper limits.
(4) A new HHA shall be reimbursed pursuant to subsection (3) of this section until a cost report is:
(a) Submitted pursuant to Section 8 of this administrative regulation; and
(b) Received by the department by May 31 preceding the rate year.
(5) If, during the initial period, a provider pursuant to subsection (3) of this section requests a rate adjustment, the department shall grant a rate change if the provider:
(a) Submits documentation indicating that the cost of providing services is significantly higher than the reimbursement rate that the provider is receiving; and
(b) Submits a projected cost report.
(6) When a new HHA's first cost report is received, interim payments for the cost report period shall be adjusted pursuant to Section 3(4) or (5) of this administrative regulation.
Section 5. Incentive Payment. (1) If a nonpublicly-operated HHA’s nonaggregated base year costs are below the Medicaid upper limits pursuant to Section 7 of this administrative regulation for the corresponding period of time, the HHA shall receive a cost containment incentive payment, pursuant to Section 3(2)(e) of this administrative regulation, in accordance with the following payment schedule:

<table>
<thead>
<tr>
<th>PERCENTAGE OF PER UNIT COST TO UPPER LIMIT</th>
<th>INCENTIVE PAYMENT PER VISIT AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>95.01% - 100%</td>
<td>$1.00</td>
</tr>
<tr>
<td>90.01% - 95%</td>
<td>$1.50</td>
</tr>
<tr>
<td>85.01% - 90%</td>
<td>$2.00</td>
</tr>
<tr>
<td>80.01% - 85%</td>
<td>$2.50</td>
</tr>
<tr>
<td>80% and below</td>
<td></td>
</tr>
</tbody>
</table>

(2) An incentive payment shall:
(a) Be subject to verification of visits;
(b) Bear an inverse relationship to the current year basic per visit cost; and
(c) Be adjusted each July 1 during the interim rate setting process pursuant to Section 3 of this administrative regulation for the rate year.

(3) The portion of an interim rate equal to the “incentive payment per visit amount” shall not be subject to retrospective settlement pursuant to Section 3(4) or (5) of this administrative regulation.

Section 6. Payment to an Out-of-state HHA. (1) An out-of-state HHA that provides a covered service inside the Commonwealth of Kentucky to an eligible Kentucky Medicaid recipient shall be paid pursuant to Section 3 of this administrative regulation.

(2) Except as provided in subsection (3) of this section, an out-of-state HHA that provides a covered service to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky shall be reimbursed the lesser of:
(a) Usual and customary billed charge;
(b) Medicare upper limit; or
(c) Medicaid upper limit.

(3) If an out-of-state HHA provides the following items to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky, reimbursement shall be paid at sixty (60) percent of the HHA’s usual and customary actual billed charges for:
(a) Disposable medical supplies; and
(b) Enteral nutritional products.

Section 7. Establishment of Medicaid Upper Limits. (1) Medicaid upper limits for the services pursuant to Section 3(1)(a) through (e) of this administrative regulation shall be established each year to be effective on July 1 for a nonpublicly-operated HHA.

(2) Medicaid upper limits shall be determined by the department as follows:
(a) Based on the Standard Metropolitan Statistical Area (SMSA) designation, a nonpublicly-operated HHA shall be classified as:
   1. Urban; or
   2. Rural.
(b) Two (2) sets of arrays pursuant to paragraph (a) of this subsection shall be established for each category of service pursuant to subsection (1) of this section.
(c) Each HHA’s average unit cost per service as established pursuant to Section 3(2)(d) of this administrative regulation shall be:
   1. Grouped pursuant to paragraph (b) of this subsection; and
   2. Arrayed from lowest to highest.
(d) The median per unit cost for each of the ten (10) arrays pursuant to paragraph (c) of this subsection shall be based on the median number of Medicaid units pursuant to Section 3(2)(b) of this administrative regulation.

(3) Medicaid upper limits for a nonpublicly-operated HHA shall be set at one hundred (100) percent of the median per unit cost as established pursuant to paragraph (d) of this subsection.

(4) The following HHAs shall be exempt from the Medicaid upper limits, but shall be subject to the Medicare upper limits:
(a) A publicly-operated HHA; or
(b) A new HHA who does not have two (2) full years of operation.

(5) The Medicaid upper limit for skilled nursing services shall be the Medicare upper limit for skilled nursing services.

Section 8. Financial Data and Cost Reporting Requirements. (1) Except for a provider identified in Section 6(2) of this administrative regulation, an HHA shall submit to the department a completed cost report:
(a) That includes workpapers utilized to prepare the cost report including:
   1. Detail of how a recategorization or an adjustment was calculated;
   2. A working trial balance; and
   3. Schedules tying the trial balance to the cost report;
(b) On an annual basis, within five (5) months after the close of the HHA’s fiscal year;
(c) Prepared in accordance with the Annual Medicaid Home Health/HCBS Cost Report Instructions; and
(d) Pursuant to 42 C.F.R. 413.24(a), (b), (c), and (e).
(2) A thirty (30) day extension of time for submitting a cost report pursuant to subsection (1) of this section may be granted by the Director of the Division of Long Term Care and Disability Services or his designee if:
(a) A provider’s operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control;
(b) The provider submits a request for the extension in writing; and
(c) The request is received by the department within five (5) months after the close of the HHA’s fiscal year.

(3) An HHA’s payment shall be suspended if:
(a) 1. Time for submitting a cost report pursuant to subsection (1) or (2) of this section has lapsed; and
   2. A cost report has not been submitted to the department;
(b) The department determines that the HHA does not maintain or no longer maintains records pursuant to subsection (4) of this section; or
(c) The provider fails to provide the department with access to records pursuant to:
   1. 907 KAR 1:672, Section 2(6); or
   2. Subsection (4) of this section.

(4) For a period of five (5) years from the date that the department issues a letter to an HHA detailing the Medicaid final settlement of a cost report, the HHA shall retain and make available to the department:
(a) Records and documents pursuant to 42 C.F.R. 413.20(a), (c), and (d); and
(b) Documentation of work or services performed if compensation is claimed by the:
   1. Owner; or
   2. A related family member of the:
      a. Owner; or
      b. Administrator.
(5) If during a twelve (12) month period an HHA contracts with a subcontractor for the provision of goods and services established pursuant to 907 KAR 1:030 costing or valued at $10,000 or more, the HHA shall include a clause in the contract that requires a subcontractor to make available to the department records and documents related to the provision of services consistent with the requirements pursuant to subsection (4) of this section.
(6) If the department is denied access to a subcontractor’s records pursuant to subsection (4) of this section, the cost of goods or services furnished by the subcontractor shall become a nonallowable cost reported on a cost report.
(7) If an HHA has been voluntarily or involuntarily terminated from the Medicaid Program, reimbursement payments shall be withheld until:
(a) A cost report is received from the HHA provider for the period of time the provider participated in the Medicaid Program:
   1. Beginning with the first day of the provider’s fiscal year im-
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... (5) of this administrative regulation is completed by the department.

Section 9. Allowable HHA Cost. (1) Except as limited pursuant to Section 10 of this administrative regulation, cost pursuant to subsection (c) of this section shall be allowable and eligible for reimbursement pursuant to this administrative regulation if costs are:

(a) Reflective of a provider’s actual expenses of providing a service; and
(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.8.

(c) Except as limited by Section 10 of this administrative regulation, and subsection (1) of this section, the following costs shall be allowable:

(a) Allowable cost to related organizations pursuant to 42 C.F.R. 413.17;
(b) Costs of educational activities pursuant to 42 C.F.R. 413.85;
(c) Research costs pursuant to 42 C.F.R. 413.90;
(d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94;
(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 C.F.R. 413.98; and
(f) Therapy and other services pursuant to 42 C.F.R. 413.106.

Section 10. Limitations on Allowable HHA Cost. (1) Board of directors’ fees.

(a) The cost of board of director’s fees shall be limited annually to:

1. a. Five (5) meetings for a single-facility organization; or
2. Twelve (12) meetings for a multiple-facility organization; and
3. $200 for each director of the board attending each meeting, including the cost of attending the meeting.

(b) The cost associated with a private club membership shall not be an allowable cost.

(2) Motor vehicles.

(a) An allowable motor vehicle cost shall be:

1. Limited to cost related to patient care; and
2. Documented sufficiently to support business use.

(b) An allowable cost associated with HHA facility-owned vehicles and mileage allowances shall be limited to the federal income tax mileage allowance.

(c) The costs associated with personal use of a facility-owned motor vehicle shall not be an allowable cost unless the value of the personal use of the vehicle is:

1. Included in the employee’s W-2 statement; or
2. Reported on a Form 1099 in accordance with Internal Revenue Service regulations.

(d) An allowable cost pursuant to paragraph (c) of this subsection shall be considered compensation to the extent that:

1. Compensation to an owner does not exceed the owner’s compensation limits pursuant to Section 11 of this administrative regulation; and
2. The total compensation package to a nonowner is reasonable pursuant to 42 C.F.R. 413.9(b).

(3) The cost associated with political contributions shall not be allowable.

(4) The following legal fees shall not be allowable costs:

(a) A legal fee associated with unsuccessful lawsuits against the Cabinet for Health and Family Services or the department;
(b) A legal fee incurred by the provider in an attempt to block the approval of a certificate of need for another provider;
(c) A legal fee associated with the acquisition of another HHA; and
(d) A legal fee resulting from the commission of an illegal act by an:

1. HHA;
2. HHA’s owner; or
3. HHA’s agent; or
4. A legal fee unrelated to patient care.

(5) Legal fees associated with successful lawsuits against the cabinet shall be limited to inclusion as allowable cost in the period:

1. In which a suit is settled after a final decision has been issued that the lawsuit is successful;
2. Agreed to by involved parties; or
3. As ordered by the court.

(6) Travel expenses. The cost of travel expenses shall be limited to:

(a) Activities related to the educational needs of the:
   1. Agency owners;
   2. Directors; or
   3. Staff;
(b) Reasonable and necessary cost pursuant to 42 C.F.R. 413.95(b) as determined in evaluating the:
   1. Number of trips taken;
   2. Expense associated with each trip;
   3. Number of persons attending each function; and
   4. Appropriateness of the training; and
(c) Trips taken within the forty-eight (48) contiguous United States.

Section 11. Owner’s Compensation Limits. (1) Compensation to an owner who is not an administrator shall:

(a) Be considered an allowable cost pursuant to 42 C.F.R. 413.102; and
(b) Exclude:

1. Board of directors’ fees; and
2. Fringe benefits routinely provided to all employees.

(2) Compensation of a part-time owner-employee performing managerial functions shall not exceed the percent of time worked times eighty (80) percent of the applicable compensation limits for an owner administrator.

(3) A full-time owner administrator or full-time owner-employee who performs nonmanagerial functions in an HHA other than the HHA with which he is primarily associated shall be limited to:

(a) Reasonable compensation from the nonprimary agency for not more than fourteen (14) hours per week supported by:

1. The owner’s proof of performance of a necessary function; and
2. Documentation of time claimed for compensation; and
(b) A salary from the agency with which the person is primarily associated.

(4) Managerial functions performed in a nonprimary agency by a full-time owner administrator or a full-time owner-employee of another agency shall not be considered an allowable cost.

(5) Compensation to an owner-administrator of a rural or urban HHA shall be:

(a) Limited to $60,575 beginning July 1, 1999;
(b) Increased on July 1 of each year by the inflation factor index for wages and salaries of the Home Health Agency Market Basket of Operating Costs as indicated by the National Forecasts supplied by Standard and Poor’s, Inc.; and
(c) Published annually through a notification to all providers to advise of the revised limits for owner’s compensation to be effective July 1 of each year.

Section 12. Audit Functions. (1) All HHA provider costs applicable to a Medicaid beneficiary shall be subject to:

(a) Review or audit by the department; and
(b) A final retroactive settlement based upon an adjustment to an HHA provider’s costs reported in a cost report for any reporting period under review or audit.

(2) The department shall perform a uniform desk review (UDR) of each provider’s annual cost report.

(3) A summary of the UDR shall be used:

(a) To settle the cost report without audit; or
(b) To determine the extent to which audit verification is required.

(4) If indicated by the uniform desk review, an audit shall be conducted in accordance with the “Government Auditing Standards”.

Section 13. Payment Amounts for State Fiscal Year (SFY) 2002. Effective July 1, 2001, the payment rate that was in effect on June 30, 2001 for a home health service shall remain in effect until
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Section 14. Payment Amounts Effective July 1, 2002. A participating HHA shall be reimbursed for a home health service provided in accordance with 907 KAR 1:030 at the lesser of:

(1) The provider’s usual and customary charge; or
(2) The Medicaid fixed upper payment limit per unit of service as established in Section 15 of this administrative regulation.

Section 15. Fixed Upper Payment Limits Effective July 1, 2002. (1) Except for state fiscal year 2006, the following rates shall be the fixed upper payment limits for home health services:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fixed Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skilled Nursing</td>
<td>$83.00 per visit</td>
</tr>
<tr>
<td>Home Health Aide</td>
<td>$32.50 per visit</td>
</tr>
<tr>
<td>Speech Therapy</td>
<td>$81.00 per visit</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>$81.00 per visit</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>$81.00 per visit</td>
</tr>
<tr>
<td>Medical Social Service</td>
<td>$65.00 per visit</td>
</tr>
</tbody>
</table>

(2) For state fiscal year 2006, the above-listed rates listed in subsection (1) of this section shall be increased by five (5) percent and be the home health service upper payment limits. The increased upper payment limits shall sunset at close of business June 30, 2006 and be reduced by five (5) percent effective July 1, 2006.

Section 16. Supplemental Payments to Licensed County Health Departments. (1) Beginning September 1, 2003, the department shall make supplemental payment to a licensed county health department home health agency equal to the difference between:

(a) Payments received for services on or after November 1, 2002 in accordance with Section 15 of this administrative regulation, and

(b) The estimated cost of providing services during the same time period.

(2) Based on a provider’s most recently submitted annual cost report, estimated costs of providing services shall be determined by multiplying the cost per unit by the number of units provided during the period.

(3) If a provider’s cost as estimated from its most recently submitted annual cost report is less than the payments received under Section 15 of this administrative regulation, the department shall recoup any excess payments.

Section 17. Reimbursement Review and Appeal. An HHA may appeal a department decision as to the application of this administrative regulation as it impacts the provider’s reimbursement in accordance with 907 KAR 1.671, Sections 8 and 9.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(c) The "Government Auditing Standards", 1994 edition, as issued by the Comptroller General of the United States;
(d) The "Kentucky Medicaid Medical Supply Cost Settlement Worksheet", Department for Medicaid Services, June 2003 edition; and
(e) The "Kentucky Medicaid Medical Supply Cost Settlement Worksheet Instructions", Department for Medicaid Services, June 2003 edition.

(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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOLINGER, JR., MD, Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED: June 30, 2005

FILED WITH LRC: July 1, 2005 at 8 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Long Term Care and Community Alternatives (As Amended at ARRS, September 13, 2005)

907 KAR 1:045. Payments for community mental health center services.

RELATES TO: KRS 205.520(3), 210.370 [.- EO 2004-444]
NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-444, effective May 11, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the program of Medical Assistance. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky’s indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for community mental health center services.

Section 1. Community Mental Health Centers. Participating in-state community mental health centers shall be reimbursed as follows:

(1) Effective July 1, 2005 [2004] the payment rate that was in effect on June 30, 2002, for community mental health center services shall remain in effect throughout state fiscal year (SFY) 2006 and there shall be no cost settling.

(2) Allowable costs shall not exceed customary charges which are reasonable.

(a) Allowable costs shall not include:

1. The costs associated with political contributions;
2. Travel or related costs for trips outside the state for purposes of conventions, meetings, assemblies, conferences, or any related activities;
3. The costs of motor vehicles used by management personnel which exceed $20,000 total valuation annually (unless the excess cost is considered as compensation to the management personnel); or
4. Legal fees for unsuccessful lawsuits against the cabinet.

(b) Costs (excluding transportation costs) for training or educational purposes outside the state shall be allowable costs.

Section 2. Implementation of Payment System. (1) Payments shall be based on units of service. One (1) unit for each service shall be defined as follows:

<table>
<thead>
<tr>
<th>Service</th>
<th>Unit of Service</th>
</tr>
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<tbody>
<tr>
<td>Inpatient Service</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Individual Therapy</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Group Therapy</td>
<td>15 minutes</td>
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<tr>
<td>Family Therapy</td>
<td>15 minutes</td>
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<tr>
<td>Collateral Therapy</td>
<td>15 minutes</td>
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<tr>
<td>Intensive In-Home Therapy</td>
<td>15 minutes</td>
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<tr>
<td>Home Visit Service</td>
<td>15 minutes</td>
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<tr>
<td>Emergency Service</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Personal Care Home</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Evaluations, Examinations, and Testing</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Therapeutic Rehabilitation for Children</td>
<td>1 hour</td>
</tr>
<tr>
<td>Therapeutic Rehabilitation for Adults</td>
<td>1 hour</td>
</tr>
<tr>
<td>Chemotherapy Service</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Physical Examinations</td>
<td>15 minutes</td>
</tr>
</tbody>
</table>
VOLUME 32, NUMBER 4 – October 1, 2005

NECESSITY, FUNCTION, AND CONFORMITY: [EQ-2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services, and placed the Division of Aging Services under the Cabinet for Health and Family Services] 142 U.S.C. Chapter 35 [3001 et seq.] authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 19A4A 050(1) authorizes the secretary to promulgate [Cabinet for Health Services to adopt] administrative regulations [as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds.] KRS 205.204 designates the cabinet [for Health Services] as the state agency to administer 42 U.S.C. Chapter 35 [3001 et seq.] in Kentucky and promulgate administrative regulations for this purpose. [The function of] This administrative regulation sets [the-o-to-ea] forth the standards of operation for a [the] homecare program for elderly [elderly] persons in Kentucky, in compliance with the statutory requirements of KRS 43A.224 that requires a separate administrative regulation for each topic of general subject matter.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 19A4A.700(1) [means activities of self-help, being able to feed, bathe, dress, transfer and toilet oneself].

(2) "Area plan" means the plan submitted by a district for the approval of the division which relates to funding under contract for the delivery of services within the planning and service area.

(3) "Assessment" means the collection and evaluation of [in-depth] information about a person's situation and functioning.

(4) ["Case manager" means an individual who meets the requirements of Section 2(1) and (2) of this administrative regulation].

(5) [Assessment shall identify needs and resources so that a comprehensive plan can be made with the client].

(6) "Case management" means a process, coordinated by a case manager, for linking a client to [ensuring-clients-receive] appropriate, comprehensive, and timely homescare services [to meet their needs] as identified in a "DAS-891, Plan of Care" [the assessment] by:

(a) Planning;

(b) Referral [Linking the client to appropriate agencies in the formal and informal caregiving systems];

(c) Monitoring; and

(d) Advocating.

(7) "Case manager" means an Individual who meets the requirements of Section 2(1) and (2) of this administrative regulation.

(8) "District" is defined by KRS 205.455(4).

(9) "Formal support system" means paid services provided to an individual from any funding source.

(10) [Advocacy through the employment of care work activities in order to achieve the best possible resolution to individual needs in the most effective way].

(11) "Homescare services" means services that:

(a) Are:

1. Provided to an eligible individual who is functionally impaired as defined by KRS 205.455(7); and

2. Directed to the individual specified in subparagraph 1 of this paragraph toward:

(a) Prevention of unnecessary institutionalization; and

(b) Maintenance [these services to eligible individuals directed toward preventing unnecessary institutionalization of functionally impaired older persons and toward maintaining those eligible for services] in the least restrictive environment, excluding residential facilities; and

(b) Include [including]:

1. Chore services as defined by KRS 205.455(1);

2. Core services as defined by KRS 205.455(2);

3. Escort services as defined by KRS 205.455(5);

4. Home-delivered meals as defined by KRS 205.455(8);

5. Home-health aide services as defined by KRS 205.455(9);

6. Homemaker services as defined by KRS 205.455(10);

7. Home repair services as defined by KRS 205.455(11);

8. Personal care services as established in subsection 11 of this section;

9. Respite services as defined by KRS 205.455(12);

(i) "Informal support system" means any care provided to an
individual which is not provided as part of a public or private formal service program;
(10) "Instrumental activities of daily living" as defined by KRS 194A.700(7).
(11) "Personal care services" means assistance with activities of daily living.
(12) "Homecare services" shall include:
(a) Homemaker;
(b) Home-health aide;
(c) Chore;
(d) Home-delivered meals;
(e) Core;
(f) Escort;
(g) Home-repair, and
(h) Respite care services.
(13) "Personal care services" means services directed toward maintaining, strengthening, or safeguarding the functioning of a person in his home. These services may include:
(a) Assisting the individual in activities of daily living; and
(b) Helping to identify and report health needs.
(14) "Home management services" means those services ordinarily involved with housekeeping necessary to maintain a person in his own home. These services may include:
(a) Shopping;
(b) Budgeting;
(c) Meal preparation;
(d) Laundry; and
(e) Cleaning.
(15) "Instrumental activities of daily living" means the components identified in home management plus the taking of prescribed medication.
(16) "Assessment" means the formal evaluation of the client's situation and functioning of a client and of the services delivered to identify changes which may have occurred since the previous assessment.

Section 2. Service Provider Responsibilities. A service provider contracting with a district to provide homecare services supported in whole or in part from funds received from the cabinet for Health Services shall:
(1) Ensure the provision of homecare services throughout the geographic area covered under its plan or proposal;
(2) Review the provision of homecare services to assure safety and consistency; and
(3) Treat the client in a respectful and dignified manner.

Section 3. Homecare Plan. For program approval, a [the area development] district shall submit to the cabinet for Health Services a proposal within its [area in the] area plan to include at least the following:
(1) An assurance of access for the Division [Office] of Aging Services to records of the district [contracting-agency] pertaining to its contract for delivery of homecare services; and
(2) A plan for the delivery of homecare services in the area to be served by the district [contracting-agency] containing:
(a) Identification of services currently provided in the district; and
(b) The following assurances:
1. A justification of a decision not to fund a homecare service, including an assurance of adequate availability from another funding source;
2. A policy and procedure for handling complaints;
3. A policy and procedure for the periodic monitoring of a client [client.DependencyInjection[the client]] for the appropriateness of homecare services and to assure safety and consistency [service];
5. An assurance that an assessment is conducted for an individual [client] and a reassessment is done at least every six months thereafter; and
6. A policy and procedure assuring that assessment for eligibility shall be conducted initially and at least every six months thereafter.

Section 4. Eligibility. (a) A prospective client [Each applicant] for homecare services shall file an application for participation and
(b) Demonstrate that the prospective client [he/she] is a person sixty (60) years of age or older; and
(c) Meet [satisfy] each of the following criteria:
1. Be functionally [The applicant has functional limitations that require a sheltered environment with provision of social- and
health-related services specific to his activities of daily living and who has been determined impaired in the performance of at least:

a. [4] Two (2) [physical] activities of daily living; or
b. [2] Three (3) instrumental activities of daily living; or

(2) A combination of one (1) activity of daily living and two (2) instrumental activities of daily living;

(c) Have [6] The applicant has a stable medical condition requiring skilled health services along with services related to activities of daily living requiring an institutional level of care; or

(4) As of the date of the application, [7] The applicant is

1. Currently residing in a;
   a. Skilled nursing facility;
   b. An intermediate care facility;
   c. A personal care facility, and

2. Able to [8, 9] can be maintained at home if appropriate living arrangements and support systems are (can be) established.

(2) Eligibility shall be determined by a case manager;

(a) Qualify in accordance with Section 5(1) and (2) of this administrative regulation;

(b) In accordance with Section 5(4) of this administrative regulation with the initial assessment and at each reassessment. Only individuals who have been trained and meet the qualifications of an [assessor or case manager] under Section 5(1) of this administrative regulation shall determine eligibility.

(3) If a client meets eligibility requirements of subsection 1 of this section for homecare services, the client or caregiver shall be informed that the client shall be eligible for services (of the eligible) homecare clients shall be informed that they shall be eligible for services as long as (be this be the case) they meet eligibility requirements.

(4) Eligibility determination shall be based upon physical (functional) impairments; however, the assessor or case manager may consider individuals whose disabilities are caused by mental or emotional impairments including Alzheimer’s or other related disorders if those impairments affect physical (functional) capacities.

(b) The [assessor or case manager] case manager shall determine the prospective client’s eligibility for;

(a) The following services in accordance with 910 KAR 1:160.

1. Adult day care services;

2. Adult day health services; or

3. Alzheimer’s respite care services; or

(b) In-home services:

5(e) Individuals being referred as needing adult day care;

6. Adult day health care, Alzheimer’s respite care, or in-home services.

Use of this procedure may be by the Executive Director, Office of Aging Services, Cabinet for Health Services, for these area development districts who provide routine assessment and case management.

(1) The home care program shall not supplant or replace services provided by the client’s informal support system.

(c) If needs are being met by the informal support system, the client shall be deemed ineligible.

(d) An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.

Section 5. Case Management. (1) A case manager [case manager] shall meet one (1) of the following qualifications:

(a) A minimum of one (1) [of a bachelor’s degree (or master’s degree) in one of the following areas of the following no experience required;]

1. Social work;

2. Gerontology;

3. Psychology;

4. Sociology;

5. A field relevant to geriatrics [no experience required];

(b) A minimum of one (1) [of a bachelor’s degree (or master’s degree) in one of the following areas of the following no experience required;]

(c) A Bachelor’s degree in a field not relevant to geriatrics or listed in Section 156(1)(A) of this administrative regulation with one (1) year experience in working with the elderly; or

(d) A Kentucky registered nurse with at least

1. Current Kentucky license and two (2) years experience in
of the "DAS-888, Quality Service Agreement";
(2) Provide a copy of the completed agreement to the client which
[if necessary]
(a) Sign and receive a copy of a completed DSS-125a, Quality
Assurance Agreement, herein incorporated by reference. The
agreement shall contain the name, address, and telephone number
of:
[a] [i] The current case manager;
(b) A designated representative of the district; and
(c) A representative of the Division of Aging Services;
(3) Ensure that a copy of a "DAS-889, Report of Complaint or
Concern" containing
2. The area-development district homecare coordinator;
(3) A client or an entity with whom the case manager, area
development district or Office of Aging Services shall be doc-
umented on the DSS-125a, Report of Complaint or Concern, herein
incorporated by reference. The identity of the complainant shall be
kept confidential, if requested.
(3) Copies of all written complaints and detailed reports of tele-
phoned or verbal complaints, concerns or homecare service sug-
gestions [are] maintained in the client's [case manager's] perma-
nent file and documented in a centralized file; and
(4) Document—Document all investigation and efforts at
resolution or service improvement that shall be available for moni-
toring by the [area development] district and Division [Office] of
Aging Services staff.

Section 7. Request for a Hearing. A client may request a
hearing:
(1) As provided by KRS 13B.010-170; and
(2) Within thirty (30) days of any decision by the:
(a) Cabinet; or
(b) District; or
(3) Service provider;

Section 8. Fees and Contributions. (1) A [The case manager or]
[case manager shall be responsible for determining fee paying
status, using the following criteria.
(a) A fee shall not be assessed for the provision of assess-
ment, or case management services, or home-delivered meals.
(b) The [case manager or]
case manager shall:
1. Consider extraordinary out-of-pocket expenses to determine
a client's ability to pay, and
2. Document in a [case record] waiver or reduction of fee
due to extraordinary out-of-pocket expenses [shall be doc-
umented on the Homecare Authorization Statement for Extra-
ordinary Expenses, herein incorporated by reference];
(c) A fee shall not be assessed to an eligible individual who
meets the definition of "needy aged" as governed by KRS
205.010(6).
(d) SSI income or a food stamp allotment shall not be
deducted available to other family members.
2. The applicant receiving SSI benefits or a food stamp allot-
ment shall be considered a family of one (1) for the purpose of fee
determination.
(2) As an eligible person [person(s)] shall be charged a fee de-
termined by the cost of the service unit multiplied by the applicable
percentage rate based upon income and size of family using 130% of
the official poverty income guidelines published annually in the
Federal Register by the United States Department of Health and
Human Services [as set forth below]. Service unit cost shall be
determined by the state agency or contracting entity in accordance
with its contract. The copayment amount shall be based on the
household's percentage of poverty, as follows:

<table>
<thead>
<tr>
<th>Percentage of Poverty</th>
<th>1 Person</th>
<th>2 Person or More</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-129%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>130-149%</td>
<td>20%</td>
<td>0%</td>
</tr>
<tr>
<td>150-189%</td>
<td>40%</td>
<td>29%</td>
</tr>
<tr>
<td>170-200%</td>
<td>66%</td>
<td>49%</td>
</tr>
<tr>
<td>201-229%</td>
<td>82%</td>
<td>62%</td>
</tr>
<tr>
<td>230% or more</td>
<td>100%</td>
<td>82%</td>
</tr>
</tbody>
</table>

200% or more

250% or more

For each additional family member add $250.
(3) A contribution from an individual, family, or other entity
[Contributions from individuals, families, or other entities] shall be
encouraged.
(b) Suggested contribution or donation rates may be estab-
lished, however, pressure shall not be placed upon the client to
contribute or donate.
(2) Homecare services shall not be withhold from an otherwise
eligible individual based upon the individual's [his] failure to vol-
tarily contribute to support services.
(4) The [area-development] district shall review and approve
the procedure [procedures] implemented by a service provider
[provider-agency] for the collecting, accounting, spending, and
auditing of fees and donations.

Section 9. [8] Allocation Formula. The homecare program
funding formula shall consist of a $20,000 base for each district,
with the remaining amount of funds distributed in proportion to the
district's elderly (60 plus) population in the state.

Section 10. [9] Termination or Reduction of Homecare
Services. (1) A [The] case manager or [and the] client shall decide to
terminate homecare services.
(b) Homecare services may be reduced or terminated if [when]
1. [a] the client's condition or support system improves; or
2. [b] A determination is made that the "DAS-891, Plan of
Care" [care-plan] cannot be followed.
(2) If homecare services are terminated or reduced, the case
manager shall:
(a) [Complete page two (2) of the Application for Homecare
Services. Notification to Client, herein incorporated by reference];
(b) Inform the client of the [his] right to file a complaint;
(c) Notify the or caregiver of the action taken; and
(c) [Complete section IV of the DSS-884 Homecare Services,
herein incorporated by reference];
(d) Assist the client and family in making referrals to another
agency [other-agency] if applicable.
(3) If homecare services are terminated or reduced due to
reasons unrelated to the clients needs or condition, the designated
district representative [homecare-coordinator], in conjunction with
the case manager, shall determine reduction or termination on a
case-by-case basis.

Section 11. [14] Incorporation by Reference. (1) The following
material is incorporated by reference.
(a) "DAS-888, Homecare Certification of Eligibility, 8/05" ["Homecare Certification of Eligibility"; (4/90), Office of Aging
Services];
(b) "DAS-889, Quality Service Agreement, 8/05" [DSS-125a
"Quality Assurance Agreement"; (4/90), Office of Aging
Services];
(c) "DAS-890, Report of Complaint or Concern, 8/05" [DSS
125a "Report of Complaint or Concern"; (4/90), Office of Aging
Services];
(d) "Homecare Authorization Statement for Extraordinary Ex-
penditures"; (4/90), Office of Aging Services, and
(e) DSS-884 "Homecare Services"; (4/90), Office of Aging
Services];
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at Cabinet for Health and Family
Services, 275 East Main Street, Frankfort, Kentucky 40621, Mon-
day through Friday, 8 a.m. to 4:30 p.m.
VOLUME 32, NUMBER 4 – October 1, 2005

JAMES W. HOLINGER, JR., Secretary
MIKE BURNSIDE, Undersecretary
MICHAEL A. FIELDS, Undersecretary
MARLA MONTELL, Commissioner

APPROVED BY AGENCY: June 15, 2005
FILED WITH LRC: June 22, 2005 at 4 p.m.
CONTACT Person: Jill Brown, Office of Legal Services, 275 East Main Street SW, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(As Amended at AARRS, September 13, 2005)

922 KAR 1:520. High-risk supplement for resource homes.


STATUTORY AUTHORITY: KRS 194A.050(1), 605.120(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 605.120(2) requires [authorizes] the cabinet to establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children, and to address additional costs associated with providing care to children with exceptional needs. In addition, Olmstead v. L.C. and E.W., 119 S. Ct. 2176 (1999), held that unnecessary institutionalization of a person with a disability may be a violation of the Americans with Disabilities Act of 1990, 3 U.S.C. 421 and that, given certain exceptions, services should be delivered in the most integrated setting appropriate to the treatment needs of a person with a disability. This administrative regulation establishes the requirements for a resource home parent to receive a high-risk supplement reimbursement, to the extent funds are available, for extraordinary care the care provider provides to children with exceptional needs who are in the custody of the cabinet.

Section 1. Definitions. (1) "Case permanency plan" is defined by KRS 620.020(1).
(2) "Child" is defined by KRS 199.011(4), and 600.020(8), and may include:
(a) An extension or reinstatement of commitment in accordance with KRS 610.110(6) or 620.140(1)(d); or
(b) A child who meets the exceptions to the age of majority in accordance with KRS 2:016, 610.110(6), and 610.110(6), with exceptions to the age of majority in accordance with KRS 2:016.

(3) "Crisis" means a factor or set of factors that:
(a) Jeopardizes a child's placement in a resource home; and
(b) Creates a risk for removal of the child from the resource home to a more restrictive setting, including institutionalization.

(4) "Exceptional needs" means the needs of a child:
(a) As specified in Section 2(1) and (2) of this administrative regulation; and
(b) Reimbursed in accordance with KRS 605.120(2).

(5) "Extraordinary care" means services:
(a) Provided to a child with exceptional needs and in the custody of the cabinet; and
(b) That exceed a regular per diem, as established in 922 KAR 1:350, Section 13.

(6) "Family team meeting" means a meeting convened to develop a child's case permanency plan to successfully attain the desired outcomes for the family in accordance with Section 2(1)(d) of this administrative regulation.

(7) "High-risk supplement" means a reimbursement to a resource home parent that is necessary to cover an additional expense associated with the provision of extraordinary care.

(8) "Resource home" means a home in which a parent is approved by the cabinet in meeting the foster care, adoption, or resource care requirements of 922 KAR 1:350.

(9) "Transition" means the period of a child's adjustment from a more restrictive out-of-home care placement to a resource home.

Section 2. Eligibility. (1) The cabinet shall consider a child eligible for a high-risk supplement if:
(a) The child requires services consistent with Level IV and Level V care established in 922 KAR 1:360, Section 4; and
(b) The child is placed in a medically fragile, specialized medically fragile, or care plus resource home in accordance with 922 KAR 1:350;
(c) A child has a need for extraordinary care due to:
1. Transition; or
2. Crisis; or
(d) A family team meeting is held to:
1. Develop a "DPP-111B, Service Supplement Assessment"; and
2. Include the following individuals:
   a. Designated regional cabinet staff;
   b. Family members, including the child or a sibling;
   c. Family friends;
   d. Community partners;
   e. Resource home parents; or
   f. Other individuals requested by the family or cabinet staff;
(d) The resource home parent agrees to maintain a monthly log of the services provided to the child for the length of the high-risk supplement;
(e) If a child is approved to receive the high-risk supplement:
   a. Designated regional cabinet staff shall develop an addendum to the child's case permanency plan that includes specific services and their timeframes for the child; and
   b. The child's resource home parent shall complete monthly logs of the child's extraordinary care.

Section 3. Per Diem. To the extent funds are available, the cabinet shall reimburse a resource home parent for the extraordinary care provided to a child with exceptional needs.

(1) A high-risk supplement shall be:
(a) A standardized per diem specified in a contract between an approved resource home parent and the cabinet; and
(b) Made to a resource home parent for a period up to six (6) months if criteria in Section 2 of this administrative regulation are met.
(2) Extensions to the high-risk supplement may be granted in six (6) month intervals. [Another high-risk supplement may be granted for up to an additional six (6) months if:
(a) The child is reassessed by the cabinet or its agent and meets the eligibility requirements of Section 2(1)(a) through (c), and (e) of this administrative regulation; and
(b) A family team meeting is held prior to the extension to:
   1. Review progress made in the child's current case permanency plan addendum, to include a review of the resource home parent's monthly log of the child's extraordinary care; and
   2. Complete a new "DPP-111B, Service Supplement Assessment."
]
(3) If the child's high-risk supplement is extended:
(a) Designated regional cabinet staff shall develop a new addendum to the child's case permanency plan that includes:
   1. Specific services and their timeframes for the child; and
   2. Services through the period of the extension granted; and
(b) The child's resource home parent shall complete monthly logs of the child's extraordinary care.
(4) Respite care shall be based on the individual needs of the child, in accordance with 922 KAR 1:350, Section 13.

Section 4. Reassessment. (1) If a resource home parent cares for a child with exceptional needs and currently receives a foster care services supplement, the child shall be reassessed:
(a) When the current foster care services supplement expires; and
(b) To determine if the eligibility requirements are met in accordance with Section 2 of this administrative regulation.
(2) If the child or resource home parent does not meet eligibility...
requirements in accordance with Section 2 of this administrative regulation, designated regional cabinet staff may provide supportive services to the child and resource home parent.

(3) If a child deemed eligible for the high-risk supplement is relocated to another resource home or out-of-home placement, the cabinet:

(a) Shall cease reimbursement of the high-risk supplement to the child's previous resource home parent; and

(b) May reconsider the child for the high-risk supplement, if criteria outlined in Section 2 of this administrative regulation are met.

Section 5. Record-keeping. Designated cabinet staff shall:

(1) Track a recipient receiving a high-risk supplement; and

(2) Notify the designated regional cabinet staff of an impending contract expiration one (1) month prior to the expiration of the supplement.

Section 6. Service Appeals. A resource home parent may request an appeal in accordance with 922 KAR 1:320.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON, JR., Commissioner

APPROVED BY AGENCY: July 28, 2005
FILED WITH LRC: July 28, 2005 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7955, fax (502) 564-7573.
VOLUME 32, NUMBER 4 – October 1, 2005
ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(Amended After Comments)

806 KAR 12:080. Replacement of life insurance and annuity contracts; replacement of.

RELATES TO: KRS 304.12-030
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Executive Director (Commissioner) of Insurance may make reasonable rules and regulations necessary for or as aid to the enforcement of any provision of the Kentucky Insurance Code. KRS 304.12-030 establishes minimum standards of conduct to be observed in replacement or proposed replacement of life insurance policies and annuity contracts. This administrative regulation sets forth the procedures to be followed in the replacement or proposed replacement of life insurance policies and annuity contracts.

Section 1. [Purpose] The purpose of this administrative regulation is:
(1) To regulate the activities of insurers and agents with respect to the replacement of existing life insurance; and
(2) To protect the interests of life insurance policy owners by establishing procedures to be employed in the replacement or proposed replacement of existing life insurance.

Section 2. Definitions. For the purposes of this administrative regulation, the following terms shall have the meaning herein provided:
(1) "Replacement", "existing insurer", "existing life insurance", and "replacing insurer", are defined as in KRS 304.12-030.
(2) "Conservation" means any attempt by the existing insurer or its agent to continue existing life insurance in force after the existing insurer has received a copy of the "Office Form A, Important Notice: Replacement of Life Insurance or Annuities (Notice Regarding Replacement of Life Insurance)" as required by Section 3(4)(2) of this administrative regulation from a replacing insurer. A conservation effort does not include [such] routine administrative procedures [as late payment reminders, late payment offers or reinstatement offers].
(3) "Direct-response solicitation" is defined in KRS 304.12-030(1)(v). "Direct-response sales" means any sale of life insurance where the agent does not utilize an agent in the sale or delivery of the policy.
(4) "Soliciating material" means written sales aids of all kinds, including policy summaries and comparison statements, which are used by an insurer, agent, or broker in comparing existing-life insurance to proposed-life insurance in order to recommend the replacement or conversion of existing-life insurance. Sales aids of a generally descriptive nature, which are maintained in the insurer's advertising compliance file, shall not be considered soliciting material. "Existing life insurance" is defined in KRS 304.12-030(1)(d).
(5) "Existing insurer" is defined in KRS 304.12-030(1)(b).
(6) "Financed purchase" is defined in KRS 304.12-030(1)(e).
(7) "Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years.
(8) "Office" means the Office of Insurance.
(9) "Policy summary" means:
(a) For policies or contracts other than universal life policies, a written statement regarding a policy or contract which shall contain, to the extent applicable, the following information:
1. The current death benefit;
2. The annual contract premium;
3. The current cash surrender value;
4. The current dividend; and
5. The amount of outstanding loans; or
(b) For universal life policies, a written statement that shall contain, at a minimum, the following information:
1. The beginning and end dates of the current reporting period;
2. The policy value at the end of the previous reporting period and at the end of the current reporting period;
3. The total amounts that have been credited or debited to the policy value during the current reporting period, identifying each by type;
4. The current death benefit at the end of the current reporting period on each life covered by the policy;
5. The net cash surrender value of the policy as of the end of the current reporting period; and
6. The amount of outstanding loans, if any, as of the end of the current reporting period.
(10) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.
(11) "Replacement" is defined in KRS 304.12-030(1)(a).
(12) "Replacing insurer" is defined in KRS 304.12-030(1)(c).
(13) "Sales material" means a sales illustration and any other written, printed, or electronically-presented information created, compiled, or provided by the company or agent and used in the presentation to the policy or contract owner related to the policy or contract purchased.
(14) "Universal life insurance policy" means a life insurance policy where separately identified interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality and expense charges are made to the policy. A universal life insurance policy may provide for other credits and charges, such as charges for the cost of benefits provided by the insurer.

Section 3. [Exemptions] This administrative regulation shall not be applicable to the policies or contracts [as set forth in KRS 304.12-030(3)(d)].

Section 4. [Duties of Agents [where- Replacement Is Involved]]
(1) Each [replacing] agent shall submit to the [replacing] insurer with, or as part of the [such] application, [life-insurance] a statement signed by both the applicant and the agent as to whether the applicant has existing policies or contracts [ex-officio] a substantially similar application approved by [with prior approval of the] the executive director [commissioner]. No approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall [must] be:
(a) Signed by both the applicant and the agent attesting that:
1. The notice has been read aloud by the agent; or
2. [That] The applicant did not wish the notice to be read aloud, in which case the agent need not have read the notice aloud; and
(b) Left with the applicant.
(3) The notice shall list all life insurance policies or annuity contracts proposed to be replaced, and properly identified by:
(a) Name of insurer;
(b) The insured or annuitant; and
(c) Policy or contract number, if available.
(4) The notice shall include a statement as to whether each
policy or contract will be replaced or whether a policy or contract will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification shall be listed.

(5) In connection with a replacement transaction, the agent shall leave with the applicant at the time an application for a new policy or contract is completed, the original or a copy of all sales material. Electronically-presented sales material shall be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.

(6) Except as provided in Section 6(3), in connection with a replacement transaction, the agent shall submit to the insurer to which an application for a policy or contract is presented,

(a) A copy of each document required by this section;

(b) A statement identifying any presented or electronically-presented company approved sales materials used; and

(c) Copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased [Where replacement is involved, the agent shall:

(a) Submit to the replacing insurer, with the application, a copy of the "Notice Regarding Replacement of Life Insurance" signed by the agent and the applicant; and

(b) Prepare and deliver, if the policy material will be presented to the applicant, a copy of any individualized sales material used for presentation to the applicant].

Section 4. [6.] Duties of [Replacing] Insurers That Use Agents (except for Direct-Response Insurers). (1) Maintain a system of supervision and control to ensure compliance with the requirements of this administrative regulation that shall include at least the following:

(a) [44] Inform its agents (field representatives) of the requirements of this administrative regulation and KRS 304.12-030, and incorporate the requirements of this administrative regulation into all relevant agent training materials prepared by the insurer;

(b) Provide to each agent a written statement of the insurer's position with respect to the acceptability of replacements providing guidance to its agents as to the acceptability of those transactions;

(c) A system to review the appropriateness of each replacement transaction that the agent does not indicate is in accord with paragraph (b) of this subsection;

(d) Procedures to ensure that the requirements of this administrative regulation have been met and

(e) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or agent.

(2) Have the capacity to monitor each agent's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make the records available to the Office of Insurance. The capacity to monitor shall include the ability to produce records for each agent's:

(a) Life replacements, including financed purchases, as a percentage of the agent's total annual sales for life insurance;

(b) Number of lapses of policies by the agent as a percentage of the agent's total annual sales for life insurance;

(c) Annuity contract replacements, as a percentage of the agent's total annual annuity contract sales;

(d) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system as required by subsection (1)(e) of this section; and

(e) Replacements, indexed by replacing agent and existing insurer.

(3) Require with or as a part of each application for life insurance or an annuity, a signed statement by both the applicant and the agent as to whether the applicant has existing policies or contracts:

(a) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacement as contained in "Office Form A. Important Notice Regarding Replacement of Life Insurance or Annuity"; and

(b) When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Section 3(6)(a), the basic illustration, and any supplemental illustrations related to the specific policy or contract that is purchased, and the agent's and applicant's signed statements with respect to financing and replacement for at least five (5) years after the termination or expiration of the proposed policy or contract;

(c) Ascertain that this sales material and illustrations required by Section 3(6)(b) meet the requirements of this administrative regulation and are complete and accurate for the proposed policy or contract;

(d) If an application does not meet the requirements of this administrative regulation, notify the agent and applicant and fulfill the outstanding requirements; and

(e) Maintain records in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

Section 5. Duties of Replacing Insurers that Use Agents. (1) Where a replacement is involved in the transaction, the replacing insurer shall:

(a) Verify that the required forms are received and are in compliance with this administrative regulation;

(b) Notify any other insurer that may be affected by the proposed replacement within five (5) business days after receipt of a completed application indicating replacement of the policy or contract is identified, if not indicated on the application, and mail a copy of the availability, illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer;

(c) Be able to produce copies of the notification regarding replacement required in Section 3(2), indexed by agent, for at least five (5) years or until the next regular examination by the insurance department of an insurer's state of domicile, whichever is later; and

(d) Provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges, or, in the case of a variable market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations imposed under the policy or contract.

(2)(3) If an insurer prohibits the use of sales material other than that approved by the insurer, an alternative to the requirements made of an insurer pursuant to Section 3(6)(b), the insurer may:

(a) Require with each application a statement signed by the agent that:

1. Represents that the agent used only company-approved sales material; and

2. States that copies of all sales material were left with the applicant in accordance with Section 3(6)(a); and

(b) Within ten (10) days of the issuance of the policy or contract:

1. Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the agent has represented that copies of all sales material have been left with the applicant in accordance with Section 3(6)(a); and

2. Provide the applicant with a toll-free number to contact insurer personnel involved in the compliance function if this is not the case; and

3. Stress the importance of retaining copies of the sales material for future reference; and

4. Be able to produce a copy of the letter or other verification in the policy file for at least five (5) years after the termination or expiration of the policy or contract. (2) Require with or as part of
each completed application for life insurance—a statement signed by the applicant stating that the proposed policy is not life insurance and that the agent furnishes the information. The insurer shall provide the applicant with a statement signed by the agent stating that the proposed policy is not life insurance and that the agent furnishes the information.

(b) The agent shall provide the applicant with a statement signed by the agent stating that the proposed policy is not life insurance and that the agent furnishes the information.

Sends the existing insurer notice of the proposed replacement within five (5) working days of the date the application is received. A copy of the notice is sent to the existing insurer within five (5) working days of receipt of the notice to the existing insurer.

(c) The existing insurer shall provide the existing insurer with a copy of the notice of the proposed replacement within five (5) working days of receipt of the notice to the existing insurer. The copy of the notice shall include any objections or comments of the existing insurer within five (5) working days of receipt of the notice to the existing insurer.

(d) The existing insurer shall provide the existing insurer with a copy of the notice of the proposed replacement within five (5) working days of receipt of the notice to the existing insurer. The copy of the notice shall include any objections or comments of the existing insurer within five (5) working days of receipt of the notice to the existing insurer.

Section 6. Duties of the Existing Insurer. Where a replacement is involved in the transaction, the existing insurer shall:

(1) Provide an In-force Illustration, if available; or a Policy summary if an In-force Illustration cannot be produced within five (5) business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five (5) business days of receipt of the notice from the policy or contract owner.

(2) Upon receipt of a request to borrow, surrender, withdraw any policy values, send a notice advising the policy owner that the release of policy values may affect the guaranteed elements, non-Guaranteed elements, base amount or surrender value of the policy from which the values are released. The notice shall be sent separately from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer shall send the notice at the time of the first loan.

Section 7. Duties of Insurer with Respect to Direct-response Solicitation. [Said: [each insurer shall:] (1) In the case of an application that is initiated as a result of a Direct-response solicitation, the insurer shall require, at the time of each completed application for a policy or contract, a statement advising whether the applicant, by application for a policy or contract, intends to replace, discontinue, or change an existing policy or contract. If the applicant indicates a replacement or change is not intended, or if the applicant fails to respond to the statement, the insurer shall send to the applicant with the policy or contract, a notice regarding replacement in "Office Form B, Notice Regarding Replacement Your Life Insurance Policy or Annuity," or other substantially similar form approved by the executive director.

(2) If the insurer has proposed the replacement, or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) Provide to applicants or prospective applicants with the policy or contract a notice, as described in "Office Form C, Important Notice: Replacement of Life Insurance Policy or Annuity," or other substantially similar form approved by the executive director. In these instances, the insurer may delete the references to the
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ance. 215 West Main Street, Frankfort, Kentucky 40601. Monday through Friday, 8 a.m. to 4:30 p.m. Forns may also be obtained on the Office of Insurance Internet Web site at http://doj.ky.gov.
[Departmental Form A, entitled “Notice Regarding Replacement of Life Insurance,” is filed herein by reference. Copies may be obtained from the Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.)

LAUJANNA S. WILCHER, Secretary

CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director

APPROVED BY AGENCY: September 12, 2005

FILED WITH LRC: September 14, 2005 at 2 p.m.

CONTACT PERSON: DJ Wasson, Kentucky Office 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 sets forth the procedures to be followed in the replacement or proposed replacement of life insurance policies and annuity contracts.
(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of 2005 Ky. Acts ch. 47, which removed the exemption of annuities and variable products from the replacement requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation will clarify how annuities and variable products are to be handled in replacement situations and amend Kentucky's existing regulation to adopt the NAIC model regulation for replacement of life insurance products and annuity contracts.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will clarify how annuities and variable products are to be handled in replacement situations and amend Kentucky's existing regulation to adopt the NAIC model regulation for replacement of life insurance products and annuity contracts. This will make Kentucky's compliance standards related to replacement the same as other states.
(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 change the existing administrative regulation by updating the types of policies and contracts subject to the replacement process. Additionally, it updates the process that must be followed when an applicant is replacing existing policies or contracts, including the notices that must be provided to the applicant and the records that must be maintained by the insurer.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the provisions of 2005 Ky. Acts ch. 47, which removed the exemption of annuities and variable products from the requirements for replacing insurance policies.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation will clarify how annuities and variable products are to be handled in replacement situations and amend Kentucky's existing regulation to adopt the NAIC model regulation for replacement of life insurance products and annuity contracts.
(d) How the amendment will assist in the effective administration of the statutes: This regulation will clarify how annuities and variable products are to be handled in replacement situations and amend Kentucky's existing regulation to adopt the NAIC model regulation for replacement of life insurance products and annuity contracts. This will make Kentucky's compliance standards related to replacement the same as other states.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers that are licensed to offer life insurance and annuities in Kentucky, and the approximately 43,000 insurance agents that are licensed to sell life insurance and annuities 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: The insurance agents and insurance companies that sell life insurance and annuities will be required to comply with the new disclosure requirements set forth in the amendments to this administrative regulation. These standards are uniform standards that have been adopted by 45 states.
(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: The cost will be minimal.
(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: The budget of the Kentucky Office 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 insurance companies and insurance agents offering life insurance and annuities in Kentucky.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Property and Casualty
(Amended After Comments)

506 KAR 39-070. Proof of motor vehicle insurance.


NECESSITY, FUNCTION, AND COMFORMITY: KRS 186.021 requires the Executive Director of the Office (Commissioner) of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.39-117 requires the Office of Insurance (department) to promulgate an administrative regulation that establishes the requirements for the insurance card that an insurer is required to give to an insured. KRS 304.39-083 and 304.39-084 require notification to the Department of Vehicle Regulation if a binder or other contract for temporary insurance or a policy is terminated by cancellation or nonrenewal. This administrative regulation establishes the requirements for the insurance card; the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy; the methods for presenting proof of motor vehicle insurance to a county clerk; and the requirements for notifying the Department of Vehicle Regulation if a binder, contract, or policy of motor vehicle insurance is cancelled or not renewed.

Section 1. Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance (Commissioner) as defined by KRS 304.4-050.
(2) "Insurer" means an insurer or self-insurer who provides security covering a motor vehicle pursuant to KRS 304.39-080.
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(3) "Motor vehicle insurance policy" means an insurance contract that provides security covering a motor vehicle required to be registered pursuant to KRS 186.020 and insured pursuant to KRS 186.021 and 304.39-060.

(4) "Office" means the Office of Insurance.

(5) "Person" is defined by KRS 304.1-020.

(6) "Personal lines motor vehicle policy" is an insurance policy issued by an insurance carrier authorized to do business in the Commonwealth of Kentucky, which insures a personal motor vehicle.

Section 2. Insurance Card to be Provided by Insurers. (1) The insurance card required by KRS 304.39-117 shall be provided to the insured at the time a policy is issued, renewed, or amended to include a vehicle:

(2) Copies of the insurance card:

(a) If the motor vehicle insurance policy covers four (4) or less vehicles, a single insurance card shall be provided for each motor vehicle. Two (2) copies of the insurance card shall be provided for each motor vehicle insured under a motor vehicle insurance policy.

(b) If the motor vehicle insurance policy covers five (5) or more vehicles, a copy of the insurance card shall be provided for each vehicle covered by the policy. Sufficient copies of the insurance card shall be provided to the policyholder so that the policyholder will have a single insurance card for the county clerk of each county in which the policyholder has motor vehicles registered.

(3) Guidelines for size and format of the insurance card:

(a) The insurance card shall be:

1. A two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;
2. A two and one-fourth (2 1/4) inch by seven (7) inch card with a vertical fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card; or
3. A four and one-half (4 1/2) inch by three and one-half (3 1/2) inch card with a horizontal fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card.

(b) The insurance card may vary slightly from the dimension requirements established in paragraph (c) of this subsection.

(c) The insurance card shall be on white paper with black or blue ink.

(4) Mandatory contents of the insurance card. The insurance card shall prominently display on its face the following information, to appear in the order listed:

(a) Title of the document: "COMMONWEALTH OF KENTUCKY PROOF OF INSURANCE"
(b) The name of the insurance company and its five (5) three (3) digit code number assigned by the National Association of Insurance Commissioners (NAIC) [Department of Insurance];
(c) The name of the named insured;
(d) The effective date and expiration date of coverage.

(1) If the card is issued mid-term, the card shall indicate the effective date of the coverage as of the written date of the policy, and the expiration date of the policy.
(e) The policy number:

(l) The type of policy, if the policy is a personal lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 13.1 or 13.2, the insurer shall indicate the policy type as "Personal" or "PL." If the policy is a commercial lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 13.3 or 13.4, the insurer shall indicate the policy type as "Commercial" or "CL." and
(g) The vehicle(s) Insured:

1. If the insurance contract covers four (4) or fewer vehicles, the motor vehicle identification: year, make or model, and vehicle identification number (VIN) of each motor vehicle.

2. If the insurance contract covers five (5) or more motor vehicles, it shall state "Fleet." The insurer may elect to include the motor vehicle identification: year, make or model, and the VIN of each motor vehicle.

(5) Other information to be provided to the Insured [insurer].

The insurer shall:

(a) Include the following information on the insurance card if the information required by subsection (4) of this section is not otherwise included:

1. The insurer's logo;
2. A statement that establishes the procedure for contacting the insurer concerning a claim; and
3. The insurer's address; and
4. The name of the insured's address;
(b) Include the information listed in paragraph (a) of this subsection on a separate document mailed with the insurance card.
(c) An insurer shall furnish with the insurance card the following written information [instructions that state]:

(a) Instructions that the insured shall keep a copy of the insurance card in each motor vehicle covered by the policy;
(b) Information as to whether or not the policy is a personal lines motor vehicle policy and whether or not the vehicle has been reported as an insured personal motor vehicle:
(1) If so, the insured shall be informed that the proof of coverage information has been reported electronically to the Department of Vehicle Registration. However, if the VIN does not appear in the database, the insurer may be required to present a copy of the insurance card to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as alternative evidence of proof of coverage; or
(2) If not, the insurer shall be instructed to present a copy of the insurance card to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as evidence of proof of coverage; and
(3) The insured shall present a copy of the insurance card or other proof of compliance with KRS 304.39-080 as required by Section 3 of this administrative regulation to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal;
(c) Instructions to compare the VIN appearing on the registration, insurance policy and card and the VIN affixed to the vehicle:

1. If the VIN [vehicle identification number] on the motor vehicle title and registration and the VIN [vehicle identification number] on the motor vehicle do not match, the policyholder shall contact the county clerk to have the title and [vehicle identification number on the motor vehicle] registration corrected;
(d) If the VIN [vehicle identification number] on the insurance card and the motor vehicle do not match, the policyholder shall report the insurance card [to the insurer under the company] to have the [vehicle identification number on the insurance policy and card corrected.

The insurer shall provide the name, address, and telephone number of an insurer representative to contact concerning a discrepancy in [the vehicle identification number numbers]. The telephone number shall be:

(a) [1] The phone number of a local agent of the insurer;
(b) [2] A toll-free telephone number of the insurer.
(c) Submission of the insurance card for approval. The insurer may file a copy of an insurance card with the commissioner for approval:

(a) If the commissioner approves the insurance card, the insurer shall not be subject to disciplinary action by the commissioner for a violation of this section of the administrative regulation for a period of time equal to the time the insurance card is approved by the commissioner.
(b) The commissioner shall not approve the insurance card if the insurance card does not comply with the provisions of KRS 304.39-117 or this administrative regulation.

Section 3. Methods of Proving Motor Vehicle Insurance. One [A person shall use] (1) of the following methods shall be used to prove that motor vehicle insurance is in effect when registering a motor vehicle:

(1) The VIN appears as an insured motor vehicle in the database;
(2) [4] A copy of the current insurance card;
(3) [5] A certificate of insurance issued by an [a general lines] insurance agent with a casualty line of authority licensed by Kentucky;
(4) [6] An insurance contract with a declaration page attached showing that the policy is in effect at the time the motor vehicle is being registered or transferred;
(5) [7] A letter from the Kentucky Automobile Insurance Plan serving as prima facie evidence of insurance in force; or
(6) [8] If the owner of the motor vehicle is serving in the armed forces outside Kentucky, an affidavit by the provost marshal of the base where the person is stationed stating that the motor vehicle is covered by an automobile liability insurance policy.
A letter from the Kentucky Office of Insurance serving as prima facie evidence of self insurance pursuant to KRS 304 39-080(7).

Section 4. Beginning January 1, 2006, and each month thereafter, an insurer shall submit information on each vehicle covered by a personal lines motor vehicle policy according to the rules contained in Section 2.1 of the Kentucky Automobile Liability Insurance Reporting Guide. Information to be submitted by insurers on Cancellation and Nonrenewal of Motor Vehicle Insurance Policies: (1) An insurer shall submit information on a motor vehicle insurance policy cancellation or nonrenewal on a computer cartridge, diskette, or magnetic tape that complies with the requirements established in subsections (3) and (4) of this section unless: (a) The insurer submits notice on less than fifty (50) policies per accounting month; (b) The use of a computer cartridge, diskette, or magnetic tape will be an unreasonable burden on the insurer; or (c) Other good cause not to use a computer cartridge, diskette, or magnetic tape is shown.

(2) If an insurer submits notice on less than fifty (50) policies per accounting month, the insurer shall submit the information on Form No. TC96-31, Manual Report of Insurance Cancellation (fifty (50) or less).

(3) Information on a computer cartridge, diskette, or magnetic tape shall comply with the field definitions and explanations established in the Cancellation Tape Data Entry Format.

(a) The cartridge, diskette, or tape shall have the accounting period clearly marked on its label. If the cartridge, diskette, or tape contains a correction for a prior accounting period, the label shall be marked "Correction."

(b) A cartridge shall: 1. Be a 3480 cartridge tape, and 2. Have: a. An IBM standard label; b. A logical record length of 300; and c. A block size of 22700;

(c) A diskette shall: 1. Be a three and one-half (3 1/2) inch, one- and four-tenths (1.4) meg, MS-DOS compatible diskette;

(d) A tape reel shall: 1. Be submitted if the insurer is unable to submit a cartridge or diskette; and 2. Have: a. A logical record length of 300; and b. Block size of 22700;

(4) An insurer shall submit a sample of the cartridge, diskette, or tape to the department for approval of the format. A cartridge, diskette, or magnetic tape that does not comply with the format shall be returned to the insurer for correction.

(5) Information required upon cancellation and nonrenewal. An insurer shall provide the following information to the Department of Vehicle Regulation if a policy is cancelled or not renewed:

(a) If the motor vehicle policy covers four (4) or less motor vehicles, the motor vehicle identification for each vehicle including the:

- A: Year;
- B: Make or model, and
- E: Vehicle identification number, or
- 2: If the motor vehicle policy covers five (5) or more vehicles, the designation "fleet";

(b) Name of the named insured;

(c) Policy number;

(d) Company code;

(e) Effective date of the termination of the motor vehicle insurance policy;

(f) Street, city, state, and zip code of the named insured;

(g) Formal number donating the type of media used; and

(h) Effective date of the original policy;

(i) The Social Security number or driver's license number of the named insured; and

(j) The code donating whether the policy was a cancellation or nonrenewal;

(6) Unless the technology to edit the list is unavailable to the insurer, an insurer shall:

(a) Edit the list of cancellations and nonrenewals prior to submitting the list to the Department of Vehicle Regulation; and

(b) Delete information on a policyholder if that person's policy was:

1. Terminated and reinstated, or
2. Terminated and replaced by a policy issued by the same insurer.

Section 5. For motor vehicles insured under a commercial lines or fleet policy, all insurers shall report cancellations pursuant to Part 2.2 of the Kentucky Automobile Liability Insurance Reporting Guide.

Section 6. An insurance agent shall submit to the Department of Vehicle Regulation a completed Form TC96-30 if the purchaser of a binder or temporary insurance contract cancels the binder or contract before the agent has submitted the application to the insurance company.

Section 7. [6] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Automobile Liability Insurance Reporting Guide", Transportation Cabinet, Department of Vehicle Regulation (Version 1.6, 8/15/2005 [8/23/2006 edition]; and [Cancellation Tape Data Entry Format] (1996 edition), Kentucky Transportation Cabinet, Department of Motor Vehicle Licensing);

(b) [Form No. TC96-31, Manual Report of Insurance Cancellation (fifty (50) or less) (November-1996 edition), Kentucky Transportation Cabinet, Department of Motor Vehicle Licensing; and

(c) [Form No. TC96-30, Motor Vehicle Insurance Agent Insurance Binder Cancellation Form (5/96 [September-1996 edition]), Kentucky Transportation Cabinet, Department of Motor Vehicle Regulation (Licensing)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, by the Department of Vehicle Regulation, P. O. Box 2014, 200 Mero Street, Frankfort, Kentucky 40622 [Kentucky Department of Vehicle Regulation, Division of Motor Vehicle Licensing, P. O. Box 2014, State Office Building, Room 206, Frankfort, Kentucky 40601], Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at the Transportation Cabinet Web site: http://transportation.ky.gov/mv/home.htm.

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AG 9/21/2005; September 12, 2005
FILED WITH LRC: September 14, 2005 at 2 p.m.
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40620, phone (502) 564-0688, 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 establishes the requirements for the insurance card that an insurer is required to provide to the insured to demonstrate proof of motor vehicle insurance; the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy; the methods for presenting proof of motor vehicle insurance to a county clerk; the requirements for notifying the Department of Vehicle Regulation if a policy is cancelled or not renewed; and the requirements for notifying the Department of Vehicle Regulation if a binder is cancelled.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the manner for insurers to present proof of motor vehicle insurance to the Department of Vehicle Regulation, the manner for motor vehicle owners to present proof of motor vehicle insurance to a county clerk, the
man, for insurers to report coverage and cancellation or nonrenewal of coverage to the Department of Vehicle Regulation, and the requirements for the insurance card that an insurer is required to give to an insured.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186.021 requires the Executive Director of the Office of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.39-17 requires the Office of Insurance to promulgate an administrative regulation that establishes the requirements for the insurance card that an insurer is required to give to an insured. KRS 304.39-083 and 304.39-084 require notification by an insurance agent or company to the Department of Vehicle Regulation if a binder or other contract for temporary insurance or a policy is terminated by cancellation or nonrenewal. This administrative regulation establishes the requirements for the insurance card; the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy, the methods for presenting proof of motor vehicle insurance to a county clerk, and the requirements for notifying the Department of Vehicle Regulation if a binder, contract, or policy of motor vehicle insurance is canceled or not renewed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: The administrative regulation will ensure that all insurers are providing standardized information regarding motor vehicle insurance to their insureds. This administrative regulation will also ensure that insurers are reporting information regarding the motor vehicles that they insure in a standardized format to county clerks and the Department of Vehicle Regulation. The electronic reporting will be more efficient for the Department of Vehicle Regulation, county clerks, and law enforcement in verifying that the required insurance coverage is in place on vehicles registered in Kentucky. This in turn will facilitate enforcement against uninsured vehicles.

2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) The amendment that will change this existing administrative regulation: This amendment will change the existing administrative regulation by requiring all insurers to electronically report, by Vehicle Information Number (VIN), information regarding personal automobile insurance.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement the provisions of KRS 304.39-083, as amended by 2004 Ky. Acts ch. 130, which requires every insurance company that writes liability insurance on personal motor vehicles in Kentucky to send the Department of Vehicle Regulation, on a monthly basis, a list of VINs of each covered personal motor vehicle and the name of each policyholder.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.39-083, as amended by 2004 Ky. Acts ch. 130, requires insurers to send to the Department of Vehicle Regulation a list of the VINs of each personal motor vehicle covered by the insurer as of the last day of the preceding month and the name of each personal motor vehicle insurance policyholder. The reporting shall be electronically or by paper copy at the option of the Department of Vehicle Regulation. This amendment establishes the manner in which insurers must report this information to the Department of Vehicle Regulation. The Reporting Guide consolidates instructions for the electronic reporting of coverage information on personal motor vehicles coverage, cancellation, and nonrenewal on all other vehicles, as well as binder cancellation.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that insurers are reporting information regarding the motor vehicles that they insure in a standardized format to the Department of Vehicle Regulation. The Reporting Guide consolidates instructions for the electronic reporting of coverage information on personal motor vehicles coverage, cancellation, and nonrenewal on all other vehicles, as well as binder cancellation.

3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 200 insurers offering motor vehicle insurance in Kentucky, approximately 28,000 agents authorized to sell property and casualty insurance in all counties, and the Department of Vehicle Regulation. It will also affect all law enforcement agencies including the Kentucky State Police, Vehicle Enforcement, City and County Police and Sheriffs. In addition, the regulation will affect all owners of personal motor vehicles.

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: Insurers will be required to utilize the new electronic system for reporting insurance information for all personal motor vehicles that they insure, while continuing to report cancellation and nonrenewal of other policies. All 120 county clerks will be impacted in that the information within the electronic database will be a means to more efficiently establish proof of motor vehicle insurance. Agents will see efficiencies as well. Finally, the Department of Vehicle Regulation will be impacted as they are the state agency charged with maintaining the electronic database that will capture the information reported by the insurers regarding the personal motor vehicles that they insure.

5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: The Transportation Cabinet Division of Technology has estimated 6,717 total hours or $403,000 for the Mandatory Insurance Reporting system development.
(b) On a continuing basis: The Transportation Cabinet Division of Technology has estimated that it will cost $150,000 annually for the additional personnel, storage and processing costs.

6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The funding source for implementation and enforcement of this administrative regulation is the budget of the Kentucky Transportation Cabinet Division of Technology.

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. At this time, it is not anticipated that an 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: There are no fees established by this regulation.

9) TIERING: Is tiering applied? No tiering has been applied. Previously alternative reporting methods were made available to insurers reporting a small volume of business. This has been eliminated in order to achieve efficiencies.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development (New Administrative Regulation)

922 KAR 1:530. Post-adoption placement stabilization services.

RELATES TO: KRS 199.011, 500.020, 605.100, 605.130, 620.170, 45 C.F.R. 1355.34(b), (c), 1356.22
STATUTORY AUTHORITY: KRS 194A.050(1), 194A.050(2), 194A.050(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the cabinet to promulgate, administer and enforce those administrative regulations necessary to qualify for the receipt of federal funds. To maintain eligibility for full funding under Title IV-E and IV-B of the Social Security Act, under 45 C.F.R. 1355.34(b) and (c), the cabinet shall design services to help children achieve permanency, to include post-legal adoption services. KRS 199.472 mandates that the cabinet establishes criteria for the adoption of children by administrative regulation. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(4), which requires the cabinet to perform other services necessary for the protection of children, and KRS 605.100(1), which requires the cabinet to arrange for a program of care, treatment, and rehabilitation of the children committed to it. This administrative regulation establishes post-adoption placement stabilization services for children who were adopted from the custody of the cabinet, to the extent funds are available.
Section 1. Definitions. (1) "Aftercare plan" means a plan of care for a child upon the discontinuance of post-adoption placement stabilization services, which:
(a) Recommends services for the continued care of the child;
(b) Identifies community resources that have been arranged for the child or parent; and
(c) Includes actions that the parent agrees to take.
(2) "Child-caring facility" is defined by KRS 192.011(6).
(3) "Commitment" is defined by KRS 620.020(12).
(4) "Family team meeting" means a meeting convened to develop services to avoid the dissolution of an adoption in accordance with Section 2(2)(b) of this administrative regulation.
(5) "Post-adoption placement stabilization services" or "PAPSS" means coordination, payment, and provision of care and treatment of an adopted child by the cabinet to prevent dissolution of the adoption.

Section 2. Eligibility Requirements for Services. (1) The cabinet shall consider a request for PAPSS made on behalf of an adopted child if:
(a) The adoptive parent receives adoption assistance for the child in accordance with 922 KAR 1:160; and
(b) The cabinet determines that the adoption of the child remains in jeopardy of dissolution.
(2) The cabinet shall consider a child eligible for PAPSS if:
(a) Upon a child's placement with a child-caring facility or a decision to extend PAPSS, the child is assessed a level of care by the cabinet or its agent and determined to meet criteria for:
   1. Level IV as established in 922 KAR 1:360, Section 4(4); or
   2. Level V as established in 922 KAR 1:360, Section 4(5); and
(b) The adoptive parent:
   1. Receives adoption assistance for the child in accordance with 922 KAR 1:160;
   2. Has cooperated with other services to prevent the adoption's dissolution, such as:
      a. IMPACT Plus services through the Kentucky Medicaid Program;
      b. Family Preservation Program in accordance with 922 KAR 1:410; or
      c. Crisis stabilization through the Kentucky Medicaid Program;
   3. Authorizes the cabinet to:
      a. Coordinate PAPSS for the child;
      b. Make a referral on behalf of the child to a child-caring facility for the child's placement; and
      c. Access confidential medical and treatment information about the child; and
   4. Agrees to:
      a. Participate in a family team meeting;
      i. To include designated regional cabinet staff, family members, staff of the child-caring facility providing services to the child, or other individuals requested by the family or cabinet staff;
      ii. Within the first thirty (30) days of a child's receipt of PAPSS; and
   iii. As established in Section 4(4) of this administrative regulation.
   b. Cooperate with an assessment of the child to determine the child's needs and eligibility for PAPSS as required in Section 2(2)(a) of this administrative regulation;
   c. Place the child with a child-caring facility operating in accordance with 922 KAR 1:360;
   d. Participate in the child's treatment to support reunification with the child; and
   e. A temporary discontinuance of the child's adoption assistance, provided in accordance with 922 KAR 1:160, during the period of time the child receives PAPSS.

Section 3. Payment. (1) To the extent funds are available, the cabinet shall pay a reimbursement rate for PAPSS consistent with the child's assessed level of care as established in Section 2(2)(a) of this administrative regulation.
(2) During the time period in which a child receives PAPSS, the cabinet shall temporarily discontinue adoption assistance in accordance with 922 KAR 1:160.

Section 4. Timeframes for PAPSS. (1) The cabinet shall discontinue payment for PAPSS after sixty (60) calendar days.
(2) After the child has received PAPSS for sixty (60) calendar days, to the extent funds are available, the:
   a. Commissioner or designee may approve the child for an additional thirty (30) calendar days, for a total of ninety (90) calendar days of PAPSS, if the:
      1. Child continues to meet the requirements specified in Section 2(2)(a) of this administrative regulation; and
      2. Adoptive parent continues to meet the requirements specified in Section 2(2)(b) of this administrative regulation; or
   b. Cabinet may continue PAPSS to a child if the:
      1. Child continues to meet the requirements specified in Section 2(2)(a) of this administrative regulation;
      2. Child's assessed needs require PAPSS beyond an additional thirty (30) calendar days; and
      3. Adoptive parent:
         a. Voluntarily commits the child to the cabinet in accordance with KRS 620.170 and 45 C.F.R. 1356.22; and
         b. Continues to meet the requirements specified in Section 2(2)(b) of this administrative regulation.
   c. To the extent funds are available, the cabinet may continue PAPSS to a child beyond ninety (90) calendar days in a twelve (12) month period, if the:
      a. Child continues to meet the requirements specified in Section 2(2)(a) of this administrative regulation; and
      b. Adoptive parent meets the requirements of subsection (c)(2) of this section.
   d. If a child receives PAPSS, the cabinet may call a family team meeting for the child:
      a. At thirty (30) calendar day intervals; or
      b. More frequently than one (1) time in a thirty (30) day period with the consent of the adoptive parent.

Section 5. Continuation of PAPSS Through Voluntary Commitment. (1) If an adoptive parent voluntarily commits a child to the cabinet for the child's continued benefit of PAPSS and continues to meet criteria established in Section 2(2)(b) of this administrative regulation, the cabinet shall seek no child support from the adoptive parent.
(2) Any extension to the voluntary commitment of the child to the cabinet shall be in accordance with KRS 620.170 and 45 C.F.R. 1356.22.

Section 6. Discontinuation and Aftercare. The cabinet may develop an aftercare plan for the adoptive parent and child, if the:
(1) Cabinet discontinues PAPSS; and
(2) Adoptive parent assists in the aftercare plan's development.

Section 7. Appeals. (1) An adoptive parent shall be granted an administrative hearing in accordance with 922 KAR 1:320 if the cabinet fails to:
   (a) Use reasonable promptness in its:
      1. Response to a request for PAPSS; or
      2. Referral of an eligible child to a child-caring facility for approved PAPSS; or
   (b) Call a family team meeting for a child during the:
      1. Sixty (60) calendar days a child receives PAPSS; or
      2. Period of time a child receives an extension to PAPSS in accordance with Section 2(2) and (3) of this administrative regulation.
   (2) Private child-caring facilities shall have appeal rights in accordance with 922 KAR 1:360, Sections 14 and 15.
   (3) An adoptive parent may request a review by the commissioner if criteria of 922 KAR 1:320, Section 6(2) are met.

Section 8. Out-of-State Request for PAPSS. The cabinet shall consider out-of-state requests for a child adopted from the custody of the cabinet on a case-by-case basis, to include considerations regarding the:
(1) Needs of the child;
(2) Consent of the parent; and
VOLUME 32, NUMBER 4 – October 1, 2005

JAMES W. HOLLSINGER, JR., M.D., Secretary
MIKE BURNSIDE, Undersecretary
MIKE ROBINSON, Commissioner
APPROVED WITH LRC: June 9, 2005
FILED WITH AGENCY: June 13, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2005, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2005, 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 close of business August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge

(1) Provide a brief summary of:
(a) This what this administrative regulation does: This administrative regulation establishes post-adoption placement stabilization services for children who were adopted from the custody of the cabinet, to the extent funds are available.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish post-adoption placement stabilization services in Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the cabinet to promulgate, administer, and enforce those administrative regulations necessary to qualify for the receipt of federal funds. To meet the high level of funding requirements under IV-A and IV-E of the Social Security Act, under 45 C.F.R. 1355.34(b) and (c), the cabinet shall design services to help children achieve permanency, to include post-legal adoption services. KRS 199.472 mandates the cabinet to establish criteria for the adoption of children. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement KRS Chapter 605 provisions, including KRS 605.191(4), which requires the cabinet to perform other services necessary for the protection of children, and KRS 605.100(1), which requires the cabinet to arrange for a program of care, treatment, and rehabilitation of the children committed to it. This administrative regulation conforms to these authorizing statutes by establishing post-adoption placement stabilization services, a post-legal adoption service, to children who have been adopted from the custody of the cabinet. These services are designed to address the critical needs of an adopted child and ensure that the child's adoptive home is able to provide for the child's well being. These services are a preventive measure to avoid dissolution of a child's adoption or any maltreatment of an adopted child. Additionally, the post-adoption placement stabilization services created by this administrative regulation are available to eligible children who have been voluntarily committed to the cabinet.
(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 state statutes and ensure compliance with federal funding expectations by establishing post-adoption placement stabilization services that are designed to help support the adoption of children from the custody of the cabinet, assist adoptive parents in providing for the needs of their adopted children, prevent the maltreatment of adopted children, and offer such services to eligible children who are voluntarily committed to the cabinet. The services established in this administrative regulation will support the recruitment of adoptive parents for children available for adoption in the custody of the cabinet.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this 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.
(e) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: There are 56 private child-caring facilities licensed in Kentucky who meet the operational requirements of this administrative regulation. There are currently 3,270 children who receive an adoption subsidy and who may be eligible for post-adoption placement stabilization services, if they meet eligibility requirements. The cabinet estimates 32 children are currently eligible to receive the post-adoption placement stabilization services.
(f) Provide an assessment of how the above groups 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 cabinet may refer a child for post-adoption placement stabilization services to be provided through any private child-caring facility that meets operational requirements of this administrative regulation. Those private agencies that render such services will receive a reimbursement from the cabinet. For those children who have been adopted from the custody of the cabinet and receive adoption assistance, they will have post-legal adoption services to support their well being and safety.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $1,287,125
(b) On a continuing basis: $1,287,125
(h) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding includes Federal Adoption Incentive Funds and GF. Federal funds will be exhausted prior to the utilization of GF.
(i) 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. There are no fees in this administrative regulation. The cabinet has historically provided post-legal adoption services to children who have been adopted from the custody of the cabinet and their families. Through various studies and research into the needs of these children and families, the cabinet has determined that in order to fund these services, a reimbursement from the cabinet for these services is necessary to meet the needs of those children with most critical needs. Because there are few adopted children who would receive these services, and parameters have been set for these services, the cabinet anticipates that costs will be absorbed in its current budget and appropriations.
(j) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees.
(k) TIERING: Is tiering applied? No, tiering was not applied, as this administrative regulation will be implemented statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1355.34, 1356.22
2. State compliance standards. KRS 194A.050(1)
3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355.34, 1356.22
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None
DEPARTMENT OF STATE
Registry of Election Finance
(Amendment)

32 KAR 1:020. Appointment of campaign treasurer and optional request for reporting exemption.

RELATES TO: KRS 121.160(1), 121.180(1)
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4).
NECESSITY, FUNCTION, AND CONFORMANCE: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the [Kentucky] Registry of Election Finance to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.160(1) requires candidates as part of their filing papers to designate a campaign treasurer. KRS 121.180(1) permits certain candidates to request an exemption from reporting to the Registry when they file for office. This administrative regulation establishes a single form for the appointment of a campaign treasurer and the optional request for exemption from reporting.

Section 1. Appointment of Campaign Treasurer. The "Appointment of Campaign Treasurer and Optional Reporting Exemption Form[.2003-Edison]", shall be the official form to be used by candidates for the appointment of a campaign treasurer under KRS 121.160(1).

Section 2. Optional Request for Reporting Exemption. (1) The "Appointment of Campaign Treasurer and Optional Reporting Exemption Form[.2003-Edison]", shall be the official form to be used by candidates seeking an exemption from election finance reporting under KRS 121.180(1)(a) and (b).
(2) The "Appointment of Campaign Treasurer and Optional Reporting Exemption Form[.2003-Edison]", shall be the official form to be used by candidates seeking to rescind a request for exemption from election finance reporting under KRS 121.180(1)(c).

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

JOHN ROGERS, CHAIRMAN
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 19, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Connie L. Verill, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Connie L. Verill
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates an official form for the appointment of a campaign treasurer and optional reporting exemption.
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the Registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the reporting requirements under KRS 121.160(1) and 121.180(1).
(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 updates the latest edition of the official reporting form and clarifies the contact information under the public comment section.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the form into compliance with changes in the law to further assist the effective administration of the reporting requirements under KRS 121.160(1) and 121.180(1).
(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All candidates and slates of candidates appointing campaign treasurers and requesting exemptions from reporting requirements will be affected by this administrative regulation.
(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: The candidates and slates of candidates will be furnished a revised official form to meet their reporting requirements. To the extent the public, media, and specific interest groups may depend on the Registry’s disclosure function, they will be affected by this administrative regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.
(b) On a continuing basis: Ordinary printing costs already anticipated in budget.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry 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 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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

DEPARTMENT OF STATE
Registry of Election Finance
(Amendment)

32 KAR 1:030. Election finance statement forms; campaign contributions or expenditures in excess of $3,000.

RELATES TO: KRS 121.180(1)
STATUTORY AUTHORITY: KRS 121.120(1)(a), (4) [93]
NECESSITY, FUNCTION, AND CONFORMITY. KRS 121.120(1)(a) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) [93] requires the Registry to promulgate "[s]uch administrative regulations and prescribed official forms and perform such duties as are necessary to implement the provisions of KRS 121.145 and 121.100 to 121.190.

Page 1. (1) Candidate campaign funds and candidate campaign committee receiving contributions or making expenditures in excess of $3,000; and

(2) All permanent committees, political issues committees, caucus campaign committees, and political party executive committees regardless of the amount of contributions or expenditures shall file the reports required by KRS 121.180 on the forms provided by the Kentucky Registry of Election Finance.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Election Finance Statement", reference KREF 006, revised 05/2005;
(b) "County Executive and District Committee Election Finance Statement", reference KREF 006E C & D, revised 05/2005;
(c) "State Executive Committee Election Finance Statement", reference KREF 006E S, revised 05/2005;
(d) "Caucus Committee Election Finance Statement", reference KREF 006E C, revised 05/2005;
(e) "Permanent Committee (PAC) Election Finance Statement", reference KREF 006P, revised 05/2005; and
(f) "Inaugural Committee Election Finance Statement", reference KREF 006I, revised 05/2005;

(2) This material may be inspected, copied, or obtained subject to reasonable fees. Fee schedule, revised June 1, 1998, are hereby incorporated by reference. They are available at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. to 4:30 p.m. local time.

JOHN ROGERS, CHAIRMAN
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 19, 2005, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Connie L. Vennil
KENTUCKY REGISTRY OF ELECTION FINANCE, 140 WALNUT STREET, FRANKFORT KENTUCKY 40601, PHONE (502) 573-2226, FAX (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Vennil
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates official forms for the election finance statements of candidates, state and local committees, permanent committees, political party executive committees, and political party executive committees.
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the Registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.180(1)(a) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the reporting requirements under KRS 121.180(1).
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) The amendment will change this existing administrative regulation: This amendment updates the latest editions of the official reporting forms and clarifies the contact information under the public notice section.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(4) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the forms into compliance with changes in the law to further assist the effective administration of the reporting requirements under KRS 121.180(1).
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(f) The amendment will not change this existing administrative regulation.

(2) Provide an assessment of how the above groups or groups will be impacted by the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The above groups will be furnished revised official forms by the Registry to meet their reporting requirements.

(3) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.
(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

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

(5) Provide an estimate 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 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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

DEPARTMENT OF STATE
Registry of Election Finance
(Amendment)

32 KAR 1:050. Political committee registration.

RELATES TO: KRS 121.015(3), 121.170
STATUTORY AUTHORITY: KRS 121.120(1)(a), (4), 121.170(1)(b)(d)(f), (9), (10)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.170(1)(a) places the registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121, KRS 121.120(1)(a) requires the registry to promulgate 'adopt such administrative regulations and prescribe rules, forms, and perform such duties as are necessary to implement the provisions of KRS 121.016 and 121.100 to 121.200. The Registry shall develop prescribed forms for the making of reports under KRS Chapter 121 (the required reports, KRS 121.420(3)(a)).

Section 1. Incorporation by Reference: (1) The following material is incorporated by reference:
(a) "Political Committee Registration" form, KREF 010, revised 05/2005, shall be the official form for the registration of campaign committees, caucuses, campaign committees, political issues committees, and permanent committees and public officials.
(b) "Inaugural Committee Registration" form, KREF 010, revised 05/2005, shall be the official form for the registration of inaugural committees. The form required by KRS 121.170 for the registration of political committees, "Political Committee Registration", revised July 7, 1986, is hereby incorporated by reference and shall be:

Section 2. This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m., local time.

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 19, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Connie L. Verrill, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Verrill
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates official forms for the registration of committees required under KRS 121.170.
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the authorizing statutes: This administrative regulation assists the effective administration of the registration requirements under KRS 121.170.
(e) If this is to an existing administrative regulation, provide a brief summary of:
(f) how the amendment will change this existing administrative regulation: The amendment updates the latest editions of the official forms, adds the caucus committee requirements created under SB 112, and clarifies the contact information under the public notice section.
(g) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms, and, more specifically, develop prescribed forms for the making of required reports.
(h) How the amendment conforms to the content of the authorizing statutes: This amendment, specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(i) How the amendment will assist in the effective administration of the authorizing statutes: This amendment will bring the forms into compliance with changes in the law to further assist the effective administration of the registration requirements under KRS 121.170.
(j) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All campaign committees, caucuses campaign committees, political issues committees, permanent committees, and inaugural committees required to register will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry's disclosure function, they will be affected by this administrative regulation.
(2) 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 above groups will be furnished revised official forms by the registry to meet their registration requirements.
(3) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.
(b) On a continuing basis: Ordinary printing costs already anticipated in budget.
(4) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget.
(5) 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.
(6) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation establishes no fees either directly or indirectly.
(7) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.
DEPARTMENT OF STATE
Registry of Election Finance
(Amendment)

32 KAR 1:060. Report of contributions by a contributing organization.

RELATES TO: KRS 121.015(4), KRS 121.120(6)
STATUTORY AUTHORITY: KRS 121.120(1)(a), (4)(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4)(g) requires the registry to promulgate [adopt such] administrative regulations and prescribe [official forms and perform such duties as are necessary to implement the provisions of KRS 121.015 and 121.100 to 121.200. The Registry shall develop prescribed forms for the making of reports under KRS Chapter 121. [The required report: KRS 121.120(3)(a)]

Section 1. The "Report of Contributions by a Contributing Organization" form, KREF 012, revised 05/2005, shall be the official form for contributing organizations to report contributions.

Section 2. This form is hereby incorporated by reference and may [can] be obtained at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. local time. [The form is hereby incorporated by reference]

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Persons interested in attending this hearing shall notify this agency in writing by October 19, 2005, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Connie L. Vennl
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates an official form for the reporting of contributions by a contributing organization.
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the reporting requirements under KRS 121.015(4) and 121.180(6).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the latest edition of the official reporting form and clarifies the contact information under the public notice section.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the forms into compliance with changes in the law to further assist the effective administration of the reporting requirements under KRS 121.015(4) and 121.180(6).

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All contributing organizations required to report contributions will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry's disclosure function, they will be affected by this administrative regulation.

(4) Provide an assessment of how the above groups or categories will be impacted by extension of implementation of this administrative regulation, if new, or by the change, if it is an amendment: The above groups will be furnished a revised official form by the registry to meet their reporting requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Due to a low volume of forms on hand, ordinary printing costs already anticipated in budget.
(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry 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 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 establishes no fees either directly or indirectly.

(9) TIERING. Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

DEPARTMENT OF STATE
Registry of Election Finance
(Amendment)

32 KAR 1:070. Waiver from filing candidate's report.

RELATES TO: KRS 121.180(3)(6)
STATUTORY AUTHORITY: KRS 121.120(1)(a), (4)(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4)(g) requires the registry to promulgate [adopt such] administrative regulations and prescribe [official forms and perform such duties as are necessary to implement the provisions of KRS 121.015 and 121.100 to 121.200. The Registry shall develop prescribed forms for the making of reports under KRS Chapter 121 (the required report: KRS 121.120(3)(a)].

Section 1. The "Political Committee Registration" form, KREF
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010. revised 05/2005, shall be the official form to request a waiver from filing a report of receipts and expenditures for a candidate. [Waiver-from-Filing-Report-of-Receipts-and-Expenditures-for-a-Candidate--form]

Section 2. The form is hereby incorporated by reference and may [can] be obtained at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m., local time. [The form is hereby incorporated by reference].

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

Individuals interested in attending this hearing shall notify this agency in writing by October 19, 2005, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Verrill
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates the official form to request a waiver from filing a report of receipts and expenditures under KRS 121.180(9).
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(4)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4)(g) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the waiver request under KRS 121.180(9).
(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 merges the official forms required by a candidate to register a committee and request a waiver from filing a report of receipts and expenditures under KRS 121.180(9) and clarifies the contact information under the public notice section.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(4)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the forms into compliance with changes in the law to further assist the effective administration of the reporting requirements under KRS 121.180(9) and reduce the number of forms a candidate must file to register a committee.
(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All candidates and slate of candidates requesting a waiver from filing a report of receipts and expenditures will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry's disclosure function, they will be affected by this administrative regulation.
(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: This administrative regulation will reduce the number of forms a candidate must file to register a committee.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Due to a low volume of forms on hand, ordinary printing costs already anticipated in budget.
(b) On a continuing basis: Ordinary printing costs already anticipated in budget.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry 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 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 establishes no fees either directly or indirectly.
(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

DEPARTMENT OF STATE
Registry of Election Finance
(Amendment)

RELATES TO: KRS 121.150(1)
STATUTORY AUTHORITY: KRS 121.120(1)(a)(4)(c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(a) requires the registry to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4)(a) requires the registry to promulgate administrative regulations and prescribe forms and procedures necessary to implement the provisions of KRS 121.015 and 121.100 to 121.200. The Registry shall develop prescribed forms for the making of reports under KRS Chapter 121 [the required report, KRS 121.120(4)(a)].

Section 1. The "Report of an Independent Expenditure" form, KREF 013, revised 05/2005, shall be the official form to report independent expenditures.

Section 2. The form is hereby incorporated by reference and may [can] be obtained at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m., local time. [The form is hereby incorporated by reference].

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,
be held on October 26, 2005, at 9 a.m. at the offices of the Kentuck Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 19, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON, Connie L. Vennill, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Connie L. Vennill
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates an official form for the reporting of independent expenditures.
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the reporting requirements under KRS 121.150(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: The amendatory statement updates the latest edition of the official reporting form and clarifies the contact information under the public notice section.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.
(c) The amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the forms into compliance with changes to the law to further assist the effective administration of the reporting requirements under KRS 121.150(1).
(e) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All persons making independent expenditures and required to register and report will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry's disclosure function, they could be affected by this administrative regulation.
(f) 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 above group will be furnished a revised official form by the registry to meet their reporting requirements.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.
(6) On a continuing basis: Ordinary printing costs already anticipated in budget.
(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget.
(8) 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.
(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of the regulation apply equally to all individuals affected.

DEPARTMENT OF STATE
Registry of Election Finance
(Amendment)

32 KAR 1:100. Slate software.

RELATES TO: KRS 121.180
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4), 121.160(5)(a) [-424A-425A]; Necessity, Function, and Conformity: KRS 121.120(1)(g) grants the registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121, KRS 121.120(4) requires [-and 424A-425A(7)] the Kentucky Registry of Election Finance to promulgate administrative regulations, adopt official forms, and perform other duties necessary to implement the provisions of KRS Chapter 121 ([-and 424A]). KRS 121.120(6) requires the Kentucky Registry of Election Finance to promulgate administrative regulations to provide for a nonproprietary standardized format or formats, using industry standards, for the transmission of data required under KRS Chapter 121 ([-and 424A]), concerning campaign financing. KRS 121.120(6) also requires the Kentucky Registry of Election Finance to promulgate a filler format, to provide free filler software, and to post campaign finance data on its website on the Internet within ten (10) days of filing. KRS 121.180(12)(c) specifically requires that electronic reporting be made available for all statewide candidates, including slate of candidates for Governor and Lieutenant Governor. To effectuate this legislative mandate, the Kentucky Registry of Election Finance has developed a system of electronic reporting, promulgated the Electronic Reporting Data Transmission Format, and has contracted with providers of filler software to states of candidates. The Kentucky Registry of Election Finance encourages the use of the free filler software, which is tailored to assist states of candidates in complying with the reporting provisions. By encouraging electronic reporting for states of candidates, the Kentucky Registry of Election Finance will be better able to manage, analyze, and, and post electronically-processed data within the timeframe required by statute. This administrative regulation establishes requirements for electronic reporting for states of candidates using the designated Electronic Reporting Data Transmission Format for gubernatorial elections.

Section 1. [(4)] All states of candidates, their treasurers, and all campaign committees for states of candidates [-including-designs to candidates receiving public financing] that elect to use filler software to compile, store, or transmit electronically campaign finance data shall:
(1) [6a] Use only the filler software for electronic reporting that has been determined to comply with the "Electronic Reporting Data Transmission Format, 2003 Edition", promulgated under 32 KAR 2:220; and
(2) [b] Submit an electronic version generated by the compliant filler software of all campaign finance reports required under KRS 121.180, 121A.020(5) and 32 KAR 1:180 by filing on
Section 2. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) The "Electronic Reporting Data Transmission Format, 2003 Edition";

(b) The "Electronic Reporting Software Vendor List, 2002 Edition";

(c) The "Gubernatorial Slate Election Finance Statement, September 2002 Edition".

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

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 19, 2005, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made available to those who request a transcript. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Conni L. Varril

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for electronic reporting for candidates using the designated Electronic Reporting Data Transmission Format for gubernatorial elections.

(b) The necessity of this administrative regulation: KRS 121.120(9) requires the registry to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports. Further, the administrative regulation is promulgated as directed by KRS 121.120(6).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the reporting requirements under KRS 121.180.

(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 deletes any references to public financing under former KRS Chapter 121A which was repealed by SB 112.

(b) The necessity of the amendment to this administrative regulation: The registry will no longer administer provisions of KRS Chapter 121A as repealed by SB 112.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(6) by promulgating an administrative regulation to provide for a nonproprietary standardized format or formats, using industry standards, for the transmission of data required under KRS Chapter 121.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the effective administration of the electronic reporting requirements under KRS 121.160, as amended by SB 112.

(3) Let the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All gubernatorial slate of candidates subject to electronic reporting will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry's disclosure function, they will be affected by this administrative regulation.

(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. The gubernatorial slates will look to KRS Chapter 121 and not Chapter 121A for guidance on electronic reporting requirements as required by SB 112.

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

(a) Initially: No additional costs anticipated.

(b) On a continuing basis: No additional costs anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: NA, see (5) above.

(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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all individuals affected.

DEPARTMENT OF STATE
Registry of Election Finance
(Amendment)

32 KAR 1:180. Forms for gubernatorial slate candidates and related filers.

RELATES TO: KRS 121.160(1), [424.170.] 121.160(3), (9), 424A.005(5), 121A.040, 121A.060(5), 121A.070(4), 121A.090(7)

STATUTORY AUTHORITY: KRS 121.120(1)(q),(r),(s), 424A.090(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(d) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires [and 121A.020(7)] the Kentucky Registry of Election Finance to promulgate administrative regulations and official forms necessary to carry out the provisions of KRS Chapter 121 [and 121A], relating to the registration and reporting by slates of candidates for Governor and Lieutenant Governor. This administrative regulation establishes those forms.

Section 1. Gubernatorial Slates of Candidates Forms. The forms incorporated by reference in Section 3(1)(a) through (c), including those of this administrative regulation, shall be the
official forms for slate of candidates for Governor and Lieutenant Governor.

Section 2. [Exploratory Committee.] The forms incorporated by reference in Section 4(4)(i) through (m) of this administrative regulation, shall be the official registration and reporting forms for exploratory committee.

Section 3. [Media Reporting. Gubernatorial Slate Media Report [-September 2002 Edition,] incorporated by reference in Section 3(1)(d) [4(4)(e)] of this administrative regulation, shall be the official reporting form for mass media organizations and other entities required to file with the Kentucky Registry under KRS 121.180(11)(a). A radio or television station or network shall not be required to file any information other than the information set forth under KRS 121.180(11)(b).

Section 3. [4.] Incorporation by Reference. (1) The following material is incorporated by reference:
   (b) "Gubernatorial Slate Election Finance Statement, September 2002 Edition" form, reference KREF-006/G;
   (c) "Gubernatorial Slate Campaign Committee Registration [September 2002 Edition]" form, [reference] KREF 010/G, revised 05/2005;
   (d) "Waiver from Filing Slate Election Finance Statements, September 2002 Edition" form, reference KREF 014/G;
   (e) "Request for Certification of Eligibility to Receive an Election Campaign Fund Transfer, September 2002 Edition" form, reference KREF-009/G;
   (f) "Certification of Eligibility to Receive an Election Campaign Fund Transfer, September 2002 Edition" form, reference KREF 031/G;
   (h) "Authorization to Draw on Campaign Account, September 2002 Edition" form, KREF 033/G;
   (i) "Notice of Gubernatorial Slate Replacement [-September 2002 Edition]" form, KREF 034/G, revised 05/2005;
   (j) "Statement of Intent to Accept or Reject Transfers, September 2002 Edition" form, reference KREF 036/G;
   (k) "Reception of Statement of Intent to Accept or Reject Transfers, September 2002 Edition" form, reference KREF 037/G;
   (l) "Exploratory Committee Registration, September 2002 Edition" form, reference KREF 010/X;
   (m) "Exploratory Committee Election Finance Statement, September 2002 Edition" form, reference KREF 006/X; and

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

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 19, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Connie L. Vernill
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates revised official forms for the registration and reporting by gubernatorial slates and related media fliers.
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the registration and reporting requirements under KRS 121.160(1), 121.180(3) and 121.180(9).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the latest editions of the official forms and deletes any references to public financing under former KRS Chapter 121A which was repealed by SB 112.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, develop prescribed forms for the making of reports. Further, the registry will no longer administer provisions of KRS Chapter 121A as repealed by SB 112.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the effective administration of the registration and reporting requirements under KRS 121.160(1), 121.180(3) and 121.180(9) as amended by SB 112.
(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All gubernatorial slates of candidates and related media fliers subject to reporting will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry's disclosure function, they will be affected by this administrative regulation.
(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: The above groups will be furnished revised official forms to meet their registration and reporting requirements as required by SB 112.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Due to a low of volume of forms on hand, ordinary printing costs already anticipated in budget.
(b) On a continuing basis: Ordinary printing costs already anticipated in budget.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry 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 to implement this administrative regulation.
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regulation.
(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees; This administrative regulation establishes no fees either directly or indirectly.
(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

DEPARTMENT OF STATE
Registry of Election Finance
(Amendment)

32 KAR 2:070. Fundraiser registration.

RELATES TO: KRS 121.170(2)(a) [414A.020(6)]
STATUTORY AUTHORITY: KRS 121.120(1)(p) and (d) [414A.020(5)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(a) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.170(2) [and 414A.020(6)] require persons who directly solicit and secure contributions for a candidate or state of candidates in excess of $3,000 in an election to register as a fundraiser with the Registry of Election Finance. The purpose of this administrative regulation is to establish the procedure through which persons qualifying as fundraisers shall register with and report to the Registry of Election Finance.

Section 1. Definitions. *Fundraiser* shall have the meaning prescribed in KRS 121.015(11).

Section 2. Fundraiser Registration Procedure; Exemptions. (1) Any person who qualifies as a fundraiser as defined in KRS 121.015(11) [or 414A.020(6)] shall register with the Registry immediately upon securing contributions for a candidate or state of candidates in excess of $3,000 in an election. A fundraiser shall register by filing the *Fundraiser Registration* form (KREF-02-019) (Fundraiser—Registration) with the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. A registered fundraiser shall continue to comply with applicable reporting requirements as provided in KRS 121.170(2), by filing the *Registered Fundraiser Statement* with the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(2) As part of the packet of forms and instructions regularly provided to candidates by the registry, each candidate or state of candidates shall receive all necessary forms and instructions for complying with applicable reporting requirements, or at his or her duty of the candidate, state of candidates, or the appropriate campaign treasurer to provide the forms and reporting instructions to each person who qualifies as a fundraiser for the candidate or state of candidates.

(3) For purposes of this administrative regulation, the following activities shall not qualify a person as a fundraiser:
(a) Serving as treasurer of a campaign committee;
(b) Performing clerical duties such as receiving contributions or preparing and filing campaign finance reports;
(c) Communicating an endorsement of a candidate or state of candidates which indirectly results in the receipt of contributions, provided that the communication is not followed by one-on-one direct oral or written solicitation of contributions by the person making the endorsement;
(d) Acting as host of a social event at one's residence or place of business, provided that the host does not directly solicit and secure contributions in excess of $3,000.

Section 3. Material Incorporated by Reference. (1) The following material is incorporated by reference:
(a) *Fundraiser Registration* form KREF 019, revised 05/2005; and
(b) *Registered Fundraiser Statement*, KREF 005/F, revised 05/2005 [Forms KREF-02-010—(Fundraiser Registration)—effective 8/02 and KREF-02-020—(Fundraiser Report)—effective 8/02].

(2) These forms may be inspected, copied, or obtained, subject to applicable copyright law, from the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. local time, and are on file with the Regulations Compiler, Legislative Research Commission, Room 029, State Capitol Annex, Frankfort, Kentucky 40601.

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 19, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Connie L. Verrill

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates official forms for the registration and reporting of persons qualified as fundraisers.
(b) The necessity of this administrative regulation: KRS 121.120(4) requires the registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the regulation and reporting requirements under KRS 121.170(2).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the latest editions of the official forms and deletes any references to former KRS Chapter 121A as repealed by SB 112.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, develop prescribed forms for the making of required reports.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the forms into compliance with changes in the law to further assist the effective administration of the registration and reporting requirements under
Section 2. A contribution made under the following circumstances shall not be considered an in-kind contribution:

(1) Payment for goods and services previously or simultaneously acquired by a candidate, slate of candidates, committee, or contributing organization without depositing the funds into the campaign account and complying with all applicable reporting requirements.

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency by October 19, 2005. 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Verrill

(1) Provide a brief summary of: (a) What this administrative regulation does; (b) The necessity of this administrative regulation; KRS 121.120(1)(g) requires the registry to promulgate this administrative regulation to carry out the provisions of KRS Chapter 121.

(c) How the administrative regulation conforms to the content of the enabling statute: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS 121.150. A candidate shall not accept the use of the assets of any corporation unless the fair market value is billed to the campaign and paid for with campaign funds.
KRS Chapter 121.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of in-kind contributions.

(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 deletes any references to public financing under former KRS Chapter 121A which was repealed by SB 112.
(b) The necessity of the amendment to this administrative regulation: The registry will no longer administer the provisions of KRS Chapter 121A as repealed by SB 112.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121.
(d) How the amendment will assist in the effective administration of the statutes:
This amendment will assist the effective administration of in-kind contributions by deleting references to former Chapter 121A repealed by SB 112.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All gubernatorial slates of candidates will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry’s disclosure function, they will be affected by this administrative regulation.

(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: The gubernatorial slates will look to KRS Chapter 121 and not Chapter 121A for guidance on in-kind contributions as required by SB 112.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional costs anticipated.
(b) On a continuing basis: No additional costs anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A, see (5) above.

(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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all individuals affected.

DEPARTMENT OF STATE Registry of Election Finance (Amendment)

32 KAR 2:220. Electronic reporting file format and test file compliance procedure.

RELATES TO: KRS 121.015(13), 121.120(6), 121.180(1), 424A.020(6)
STATUTORY AUTHORITY: KRS 121.120(1)(a), 121.120(5)
NECESSITY, FUNCTION AND CONFORMITY: KRS 121.120(1)(a) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121, KRS 121.120(5)(a) requires the Kentucky Registry of Election Finance to promulgate administrative regulations providing "a nonproprietary standardized format or formats, using industry standards, for the transmission of data required under this chapter [or KRS Chapter 424A]." Further, KRS 121.120(6)(b) requires the registry to "accept test files from software vendors and persons wishing to file reports electronically" to determine whether the software and data format submitted complies with the registry's file format. This administrative regulation establishes a data file format for electronic reporting, as defined by KRS 121.015(13), and a procedure for the submission of test files.


Section 2. Submission of Test Files for Compliance. (1) A vendor of file-ready software or a person wishing to use vendor file-ready software for the purpose of electronic reporting shall submit test files for a compliance determination by the registry in the manner described by this section. The requesting vendor or person shall complete all of the following:
(a) Address the request for a compliance determination in writing to the Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.
(b) Submit a cover letter addressed to the executive director, which includes the following information:
1. A brief description of the software, including the filer types for whom the software is designed;
2. A description of the support offered to filers by the manufacturer or vendor of the software;
3. A statement describing whether the software is capable of executing in a client server environment;
4. The cost of the software, including the cost of any technical support offered by the manufacturer or vendor of the software;
and The name, address, and telephone number for a contact person who can provide any additional technical information on behalf of the vendor or person.
(c) Submit an evaluation copy of the existing software, including sample data for testing each of the five (5) file layouts described in Section 1 of this administrative regulation.
(2) Electronic campaign finance data prepared using software not determined to comply with the format specified in Section 1 of this administrative regulation shall not constitute a properly filed election finance statement.
(3) There shall be made available an Electronic Reporting Software Vendor List, Edition 2003, which shall list vendor file-ready software products that have been determined by the registry to comply with the format for electronic reporting specified in Section 1 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "The Electronic Reporting Data Transmission Format, 2003 Edition;" and
(b) "The Electronic Reporting Software Vendor List, 2003 Edition;"
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 6 a.m. to 4:30 p.m., local time or at: http://www.kref.ky.gov.

JOHN ROGERS, Chairman
APPROVED BY AGENCY: August 30, 2005
FILED WITH LRC: September 2, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 26, 2005, at 9 a.m. at the offices of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify the agency in writing by October 19, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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
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comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie L. Vernill
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a data file format for electronic reporting and a procedure for the submission of test files.
(b) The necessity of this administrative regulation: KRS 121.120(6) requires the registry to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(6) which provides for a nonproprietary standardized format or formats, using industry standards, for the transmission of data.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of electronic reporting under KRS 121.120(6).

(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 deletes any references to public financing under former KRS Chapter 121A which was repealed by SB 112.
(b) The necessity of the amendment to this administrative regulation: The registry will no longer administer the provisions of KRS Chapter 121A which was repealed by SB 112.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(6) by promulgating an administrative regulation to provide for a nonproprietary standardized format or formats, using industry standards, for the transmission of data required under KRS Chapter 121.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All gubernatorial states of candidates subject to electronic reporting will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the registry’s disclosure function, they will be affected by this administrative regulation.

(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: The gubernatorial states will look to KRS Chapter 121A and not Chapter 121A for guidance on electronic reporting as required by SB 112.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional costs anticipated.
(b) On a continuing basis: No additional costs anticipated.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A, see (5) above.

(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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied, because the provisions of this regulation apply equally to all individuals affected.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller (Amendment)

200 KAR 2:006. Employees’ reimbursement for travel.

RELATES TO: KRS 44.060, 45.101
STATUTORY AUTHORITY: KRS 44.060, 45.101

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.
(2) "Agency head" means the elected or appointed head of a budget unit.
(3) "Approval" means approval granted in either written or electronic format.
(4) "Cabinet" means the Finance and Administration Cabinet.
(5) "Division" means the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet.
(6) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area and included in Title 121, KRS and included in Title 121A, KRS policies and procedures manual incorporated by reference in 200 KAR 5:021.
(7) "Incidental expense" means unexpected minor expenses arising from travel situations, or minor expenses authorized by an agency head to be reimbursed to an employee as a matter of efficiency or convenience.
(8) "Lodging receipt" means any preprinted invoice, from a hotel, motel or type of lodging, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.
(9) "Others in the official service of the commonwealth" means individuals who:
(a) Are not state employees as defined in KRS Chapter 18A;
(b) Are not traveling on official business for the commonwealth;
(c) Are not contractors who are (shall be) entitled to reimbursement for travel expenses only, and except for (but shall not include) any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state or local employee.
(10) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.
(11) "Residence" means address of the employee designated in the official records of the Personnel Cabinet.
(12) "Secretary" means the Secretary of the Finance and Administration Cabinet.
(13) "Subsistence" means amounts [deemed to have been] expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, such as (including) tax and tips, while traveling on official state business, except for any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.
(14) "Subsistence or incidental receipt" means an itemized
receipt for meals or incidental expenses showing the date of service, amount charged, and the name of the establishment.

(15) "Travel software" means the software used by the commonwealth to process travel authorizations and travel reimbursement documents.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.

(2) Enforcement.
(a) Each agency head shall be responsible for ensuring that travel reimbursement conforms to the provisions of this administrative regulation and that all travel expense from that agency is as economical as is feasible.
(b) A person who travels on official state business shall:
1. Identity if reimbursement is being requested based on Section 7 or 8 of this administrative regulation;
2. Prior to trip, create a Travel Authorization (TE, TEI, TEO, or TEOE) document; Required;
3. After travel, create a Travel Payment Voucher (TP or TPI) document for reimbursement of business related expenses;
4. Maintain records and receipts to support the claim; and
5. Take sufficient personal funds to defray the travel expense.
(c) The secretary or designee may:
1. Disallow or reduce the amount of a claim that violates the provisions of this administrative regulation;
or
2. Require written justification for amounts claimed by an agency for its employee
(d) The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or designee, submits a written determination that establishes the reimbursement is:
1. Required to avoid an undue economic hardship on the employee;
or
2. Economically advantageous for the commonwealth.
(3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the commonwealth. Only necessary expenses of official travel authorized by an agency head or designee shall be reimbursed.

(4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determinations shall be the final and conclusive interpretation adopted by the agency.

Section 3. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the commonwealth.

(3) If an employee is permanently reassigned or is stationed at a new location two (2) months, the new location shall become that employee's official work station.

Section 4. Authorizations. (1) For travel in Kentucky, or outside Kentucky, but within the United States or its possessions, or Canada, the person requesting reimbursement shall obtain authorization from the agency head or a designated representative as authorized by Secretary's Order S97-451.

(2) Travel to a bordering state that does not require airfare or an overnight stay shall be authorized in the same manner as travel in Kentucky.

(3) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (4), (5), and (6) of this section.

(4) If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE or TEI) document.

(5) For travel outside of Kentucky, authorization shall be requested on Travel Authorization (TEO) document.

(6) For travel outside the United States, its possessions or Canada the person requesting reimbursement shall have obtained authorization from:
(a) The agency head or a designated representative;
(b) The secretary or a designated representative; and
(c) The governor or a designated representative.

(7) A travel request for travel specified in subsections (4) and (5) of this section shall be received by the agency or cabinet at least five (5) working days before the start of travel.

Section 5. Transportation. (1) Economy shall be required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) 1. Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

2.a. Tickets prepaid by the commonwealth shall be purchased through agency business travel accounts provided by a major charge card company or commercial travel agencies.

b. Tickets purchased through the Internet shall be paid by the traveler and reimbursed on a Travel Payment Voucher (TP or TPI).

3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.

4. Agencies shall be billed monthly by the charge card company.

5. Related payments shall be processed on Vendor Payment Voucher (PV) document.

(2) State vehicles. State-owned vehicles with their credit cards shall be used for state business travel if [when] available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed if more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest cost, most convenient, and timely mode of transportation for travel within the state. Payment shall be made in accordance with subsection (1) of this section.

(6) Special transportation.
(a) The cost of flying cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

(c) An employee may submit a written request for approval from the State Controller for an increased reimbursement rate greater than that calculated in Section 7, if the employee drives a personal vehicle modified to:
1. Facilitate operation by altering controls for the brakes, accelerator, or steering wheel; or
2. Allow a driver to enter the vehicle by installing a wheelchair lift, hoist, or ramp.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.

(2) Facilities providing special government rates or commercial rates shall be used if feasible.

(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.

(4) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home shall be reimbursed if:
(a) In attendance at a conference; and
(b) The lodging is a necessary expense of official travel, in accordance with Section 2(4) of this administrative regulation [ap-
proved in advance by the agency head, or a designated representative.]  

5. Group lodging, by contract.  
   a. State agencies and institutions may contract with hotels,  
   motels and other establishments for four (4) or more employees to  
   use a room or rooms on official business. Group rates shall be  
   requested.  
   b. The contract may also apply to meals and gratuities. The  
   contract rates and the costs of rooms and meals per person shall  
   not exceed limits set in Section 7 of this administrative regulation.  
   c. The traveler shall not claim reimbursement or subsistence  
   for room and meals paid direct to an establishment providing these  
   services.  
   d. Payment shall be made on a Vendor Payment Voucher  
   (VPV) document and shall not include personal charges of employ-  
   ees or others in the official service of the commonwealth.  
   e. Payment shall be made to the hotel, motel, or other estab-  
   lishment.  
   f. Contracted group meeting rooms and lodging and meal  
   charges shall be exempt from Kentucky sales tax and the agency  
   sales-use tax number assigned by the Department of Revenue  
   shall be specified on the payment document.  
   g. Tax exempt numbers shall not be used by individual em-  
   ployees to avoid point of sale payment of Kentucky sales tax con-  
   nected with lodging costs. Sales tax payments shall be reimbursed  
   on Travel Payment Voucher (TP or TP1) document.  
   h. State parks. A state agency or institution using state park  
   facilities may pay for rooms and meals by an Internal Travel  
   Voucher (ITV) document to transfer funds, within the limits of this  
   administrative regulation.  

Section 7. Reimbursement Rates. (1) The following persons  
   shall be exempted from the provisions of this section:  
   a. Governor;  
   b. Governor's staff;  
   c. Lieutenant governor;  
   d. State employees traveling on assignment with the gover-  
   nor, lieutenant governor, elected constitutional officers, or cabinet  
   secretaries;  
   e. Elected constitutional officers;  
   f. Cabinet secretaries;  
   g. State officers and employees authorized to travel outside  
   the United States;  
   h. Members of statutory boards and commissions; and  
   i. Others in the official service of the commonwealth.  

2. Lodging  
   a. Except as provided in paragraph (b) of this subsection, a  
   state officer or employee shall be reimbursed for the actual cost of  
   lodging if the:  
   1. Lodging is determined to be the most economical; and  
   2. State officer or employee has provided the hotel, motel, or  
   other establishment's receipt to be reimbursed for the travel exp-  
  enses.  
   b. Reimbursement for lodging shall not exceed the cost of a  
   single room rate, except that if employees share lodging, each  
   employee shall be reimbursed the lesser of single rate or one-half  
   (1/2) the double rate.  
   c. Subsistence and incidentals.  
   a. Breakfast and lunch. A state officer or employee shall be  
   eligible for reimbursement for subsistence for breakfast and lunch  
   expenses while traveling in Kentucky, if authorized work requires  
   an overnight stay and absence during the mealtime hours estab-  
   lished by paragraph (d) or (e) of this subsection. An employee shall  
   be in travel status during the entire mealtime. For example, to be  
   eligible for breakfast reimbursement, an employee shall leave at  
   or before 6:30 a.m. and return at or after 9 a.m. This requirement  
   shall apply to all meals.  
   b. Dinner expenses. A state officer, or employee shall be eli-  
   gible for reimbursement for dinner expenses while traveling in  
   Kentucky, if authorized work requires an absence:  
   1. At a destination more than forty (40) miles from the individ-  
   ual's work station and home; and  
   2. During the mealtime hours established by paragraph (d) or  
   (e) of this subsection.  

(c) A state officer or employee shall be eligible for reimburse-  
ment for meals while on authorized travel outside Kentucky, but  
within the United States, its possessions or Canada, at the reim-  
bursement rates established in paragraphs (d) and (e) of this sub-  
section. An employee shall be in travel status during the entire  
mealtime. For example, to be eligible for breakfast reimbursement,  
an employee shall leave at or before 6:30 a.m. and return at or  
after 9 a.m. This requirement shall apply to all meals.  

(d) Reimbursement for non-high rate areas, [ ]  
1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. -  
seven (7) dollars.  
2. Lunch: authorized travel 11 a.m. through 2 p.m. - eight (8)  
   dollars.  
3. Dinner: authorized travel 5 p.m. through 9 p.m. - fifteen (15)  
   dollars.  
4. Reimbursement for high rate areas.  
   1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - eight  
   (8) dollars.  
2. Lunch: authorized travel 11 a.m. through 2 p.m. - nine (9)  
   dollars.  
3. Dinner: authorized travel 5 p.m. through 9 p.m. - nineteen  
   (19) dollars.  
(f) A state officer or employee authorized to travel outside the  
United States, its possessions, or Canada shall be reimbursed for  
their actual and necessary expenses for subsistence.  

(g) A state officer or an employee may, with prior approval of  
the agency head or designee, be reimbursed for the actual cost  
charged for meals, if the individual is assigned to attend meetings  
and training sessions.  
(h) Gratuities may be reimbursed if:  
1. The total payment of the meal and gratuity do not exceed  
the limits established in paragraphs (d) or (e) of this subsection; and  
2. The gratuity does not exceed twenty (20) percent of the cost  
of the meal.  
(i) Lodging receipts, or other credible evidence, shall be at-  
tached to the Travel Payment Voucher (TP or TP1).  

4. Transportation expenses.  
(a) Reimbursement for authorized use of a privately-owned  
vehicle shall be:  
1. At the rate of thirty-eight (38) cents per mile until October 1,  
   2005 and  
2. Adjusted based on the American Automobile Association  
   (AAA) Daily Fuel Gauge Report for Kentucky for regular grade  
   gasoline. The rate shall be adjusted [see report on June 1, 2004  
and adjusted thereafter] on January 1, April 1, July 1, and October  
1 each calendar year based on the average retail price of regular  
grade gasoline for the week beginning on the second Sunday of the  
preceding month as follows:  
   a. If the fuel cost is between one (1) cent and one dollar forty-  
nine and nine-tenths cents ($1.499), the employee shall be reim-  
bursed thirty-two (32) cents per mile.  
   b. If the fuel cost is between one dollar fifty cents ($1.50) and  
one dollar sixty-nine and nine-tenths cents ($1.699), the employee  
shall be reimbursed thirty-three (33) cents per mile.  
   c. If the fuel cost is between one dollar seventy cents ($1.70) and  
one dollar eighty-nine and nine-tenths cents ($1.899), the  
employee shall be reimbursed thirty-four (34) cents per mile.  
   d. If the fuel cost is between one dollar ninety cents ($1.90) and  
two dollars nine and nine-tenths cents ($2.099), the employee  
shall be reimbursed thirty-five (35) cents per mile.  
   e. If the fuel cost is between two dollars ten cents ($2.10) and  
two dollars twenty-nine and nine-tenths cents ($2.299), the  
employee shall be reimbursed thirty-six (36) cents per mile.  
   f. If the fuel cost is greater than two dollars twenty-nine and  
nine-tenths cents ($2.299), the amount the employee is reimbursed  
shall increase one (1) cent for every twenty (20) cent increase in  
the rate.  
2. Not exceed the cost of commercial coach round-trip airfare.  
(b) Mileage for in-state travel shall be based on the "Kentucky  
   Office Highway Map", mileage software or MapQuest website.  
Out-of-state mileage shall be based on the most recent edition of  
the "Rand McNally Road Atlas", mileage software or MapQuest  
website.
Section 8. Actual and Necessary Expenses. (1) The following persons shall be eligible for actual and necessary expenses:
(a) Governor;
(b) Governor's staff;
(c) Lieutenant governor;
(d) Elected constitutional officers;
(e) Cabinet secretaries;
(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;
(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;
(h) Members of statutory boards and commissions; and
(i) Others in the official service of the commonwealth.
(2)(a) Actual and necessary expenses of official business travel shall be reimbursed upon submission of receipts for items over ten dollars. The secretary may reduce the amount of any actual expense to be reimbursed if the secretary determines that the expense is unreasonably excessive.
(b) Actual and necessary expenses for official business travel shall include:
1. Lodging;
2. Meals;
3. Commercial transportation;
4. Taxes related to actual and necessary expenses; and
5. Reasonable gratuities.
(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.
(d) Reimbursement for official use of a privately-owned vehicle shall be:
1. At the rate of thirty-eight (38) cents per mile until October 1, 2005; and
2. Adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted [footnote to be added on June 1, 2004 and adjusted thereafter] on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

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used to claim reimbursement for travel expenses.

(6) The Travel Payment Voucher (TP or TPI) document shall be limited to the expenses made by one (1) person for the
(a) Traveler; and
(b) If applicable, another person:
   1. Who is a ward of the commonwealth; or
   2. For whom the traveler is officially responsible.

(7) A Travel Payment Voucher (TP or TPI) document for expenses made for a person specified in subsection (6)(b) of this section shall include the person's:
   (a) Name; and
   (b) Status or official relationship to the claimant's agency.

(8)(a) A Travel Payment Voucher (TP or TPI) document shall be submitted:
   1. For one (1) major trip; or
   2. Every two (2) weeks for employees that are in travel status for an extended period.

(b) A Travel Payment Voucher (TP or TPI) document shall include:
   1. Social Security number of the claimant; and
   2. Purpose of each trip.

(c) A Travel Payment Voucher (TP or TPI) document shall be signed and dated, or entered electronically and approved by the:
   1. Claimant, and
   2. Agency head or authorized representative.

(d) If monthly expenses total less than ten (10) dollars, a Travel Payment Voucher (TP or TPI) may include expenses for six (6) months of a fiscal year.

(e) A Travel Payment Voucher (TP or TPI) document shall be:
   1. Legally printed in ink or typed, or
   2. Processed electronically through travel software.

(f) A receipt shall provide the following information for each expense:
   1. Amount;
   2. Date;
   3. Location; and
   4. Type.

(g) Receipts shall be maintained at the agency if documents are processed electronically.

(h) If leave interrupts official travel, the dates of leave shall be stated on the Travel Payment Voucher (TP or TPI). (i) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Travel Payment Voucher (TP) or TPI (1999)";
   (b) "Travel Authorization (TE or TEI) document for in-state travel (1999)";
   (c) "Travel Authorization (TEO) for out-of-state travel (1999)";
   (d) "Travel Authorization (TEG) document for out-of-country travel (1999)";
   (e) "Vendor Payment Voucher (P1) (1999)";
   (f) "Internal Travel Voucher (ITV) document (1999)";
   (g) "Kentucky Official Highway Map (2004)";
   (h) "Rand McNally Road Atlas (2001)"; and
   (i) "Secretary's Order 597-451, November 1, 1996".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet, Capitol Annex Building, Room 484 [864], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN R. FARRIS, Deputy Secretary
For R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: August 18, 2005
FILED WITH LRC: August 19, 2005 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on October 25, 2005, at 10 a.m. in Room 386 Capitol Annex, 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 October 18, 2005, 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 October 31, 2005. 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 C. Robinson, Staff Assistant, Finance and Administration Cabinet, Room 188 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
   (a) What this administrative regulation does: Reimburses state employees' travel expenses
   (b) The necessity of this administrative regulation: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate administrative regulations relating to eligibility, requirements, rates, and forms for reimbursement of travel expenses and other expenses incidental to official activities out of the State Treasury.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies eligibility, requirements, rates, and forms for reimbursement of travel and other official expenses out of the State Treasury.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies eligibility, requirements, rates, and forms for reimbursement of travel and other official expenses out of the State Treasury.
   (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 increase the mileage reimbursement for state employee use of personal vehicles to $.38 per mile temporarily until the rate is recalculated for the period beginning October 1, 2005 in accordance with the regulation currently in place.
      (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to fairly reimburse employees for the use of their personal vehicles because of the rapid increase in gasoline prices, which currently average over $2.50 per gallon. The rate is calculated quarterly, and was last calculated for the period beginning July 1 through September 30, 2005, before the drastic increase in the cost of gasoline. If the rate is currently calculated according to the formula in the regulation, the mileage reimbursement rate for the use of personal vehicles would be $.38 per mile.
      (c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation specifies the rate for mileage reimbursement.
      (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by increasing the mileage reimbursement rate to $.38 per mile for employee use of personal vehicles in order to fairly reimburse employees for the use of their personal vehicles on state business.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the Executive Branch of State Government, except state-supported universities. It shall not apply to the Legislative and Judicial branches and their employees.
(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: Employees' reimbursement for the use of their personal vehicles will be temporarily increased from $.35 per mile to $.38 per mile until the
next quarterly reimbursement rate is calculated for the period beginning October 1, 2005 based on the American Automobile Association Daily Fuel Gauge Report for Kentucky.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Administrative costs should be minimal. The increase in the mileage rate reimbursed for the use of personal vehicles is expected to cost between $93,750 and $112,500.
(b) On a continuing basis: This emergency regulation will only be in effect temporarily until the next mileage rate is calculated for the period beginning October 1, 2005.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Various governmental sources.

(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. The additional costs will come from existing agency funds.

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all regulated entities.

GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(Amendment)

201 KAR 9:021. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees.

RELATES TO: KRS 311.271, 311.550, 311.560, 311.571
STATUTORY AUTHORITY: KRS 311.565(1)(b), 311.571(1)(d), (2)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.571(1)(d) and (2)(f) require the board to promulgate administrative regulations to establish requirements for postgraduate training for applicants for medical and osteopathic licenses. This administrative regulation establishes the required duration of prescribed courses of postgraduate training for those applicants.

Section 1. (1) Except as provided by subsection (2) of this section:
(a) A license or permit shall not be issued by the board or retained by a licensee if an applicant or licensee has failed to provide the board proof that he is a graduate of a medical or osteopathic school, college, or university that has been approved by the board, and
(b) The requirement for board approval of an educational institution shall not be waived.

(2) An applicant for limited licensure-institutional practice pursuant to KRS 311.571(4) shall be granted a license without prior approval by the board of the medical or osteopathic school, college, or university from which he graduated if he has submitted proof:
(a) Of the educational institution’s existence; and
(b) That he is a graduate thereof.

Section 2. Except as provided by Section 4 of this administrative regulation:
(1) A medical or osteopathic school, college, or university located in the United States, its territories or protectorates, or Canada shall be considered approved by the board; and
(2) A license or permit granted by a medical or osteopathic school, college, or university located in the United States, its territories or protectorates, or Canada shall be recognized if written proof is submitted that the educational institution is located in:
(a) The United States, its territories or protectorates; and
(b) Canada, and approved or accredited by the Canadian Medical Association.

Section 3. Except as provided by Section 4 of this administrative regulation, a medical or osteopathic school, college, or university located outside the United States, its territories or protectorates, or Canada shall be considered approved by the board, and a license or permit issued by a medical or osteopathic school, college, or university located outside the United States, its territories or protectorates, or Canada shall be recognized, if the educational institution:
(1) Is officially recognized in good standing by the country in which it is located;
(2) Is registered as a medical school, college, or university in the country in which it is located:
(a) World Health Organization directory; or
(b) World Directory of Medical Schools; and
(3) Possesses a basic course of clinical and classroom medical instruction that is:
(a) Not less than thirty-two (32) months in length; and
(b) Under its direct authority.

Section 4. (1) The board shall deny or revoke its approval of a medical or osteopathic school, college, or university that has failed to meet the requirements for approval established by this administrative regulation.
(2) If the board denies or withdraws its approval of a medical or osteopathic school, college, or university, it shall issue an order stating the grounds upon which the denial or approval was based.

Section 5. (1) Except as provided by subsection (2) of this section, the degree of an applicant shall not be recognized unless an applicant has met the requirements established by this section. Except as provided by subsection (2) of this section, clinical clerkships that a medical school located outside the United States, its territories or protectorates, or Canada permits a student to perform in order to satisfy its curriculum’s clinical requirements shall be approved if an applicant has established that:
(a) The clinical clerkships he performed were equal in quality and character to the clinical training performed in the United States by students in American medical and osteopathic schools; and
(b) The clinical clerkships he performed had been evaluated and approved by the medical schools.
1. Prior to commencement, and
2. As required by the foreign school’s established standards for approval of clerkships performed in the United States.

(2) The board shall waive the requirements established by subsection (1) of this section, if an applicant:
(a) Collected a clerkship prior to February 12, 1985; and
(b) Has verified that:
1. Satisfactorily completed an approved three (3) year post graduate training program at one (1) hospital or institution; or
2. Been accepted into, or is currently enrolled, in the second or third year of a postgraduate training program approved by the board.

Section 6. The executive director shall recommend for approval by the board the equivalency of premedical or preosteopathic units of study credited by a college or university located outside the United States or Canada on an individual basis.

Section 7. Amount of Postgraduate Training Required. An applicant for licensure shall provide written proof of having completed the postgraduate training required by this administrative regulation.
(1) Pursuant to KRS 311.571(1)(d), an applicant for a regular license shall have satisfactorily completed:
(a) At least two (2) years of prescribed courses of postgraduate training in accordance with this administrative regulation; or
(b) At least one (1) year of prescribed courses of postgraduate training in accordance with this administrative regulation and an Oral and Maxillofacial Surgery program approved by the Commission on Dental Accreditation.
(2) Resident training license.
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(a) Except as provided in paragraph (c) of this subsection, a resident in a Kentucky postgraduate training program accredited by the American College of Graduate Medical Education shall receive a resident training license if the applicant has:
1. Completed one (1) year of postgraduate training in accordance with this administrative regulation;
2. Successfully completed:
   a. One (1) of the examinations approved under 201 KAR 9:031, Section 2; or
   b. One (1) of the combinations of examinations approved under 201 KAR 9:031, Section 1; and
3. Paid to the board a seventy-five (75) dollar fee.
(b) The resident training license shall permit its holder to practice medicine within the institution or in a setting approved by the postgraduate training program.
(c) The resident training license shall not be issued to a second-year resident without a recommendation by the director of the postgraduate training program and the approval of the board.

Section 8. Postgraduate Training Programs Approved by the Board. The following postgraduate training programs shall meet the postgraduate training requirement for licensure:
(1) All postgraduate training programs in hospitals and institutions located in the United States and approved by the Accreditation Council for Graduate Medical Education;
(2) All postgraduate training programs in hospitals and institutions located in Canada; and
(3) All postgraduate training programs in hospitals and institutions located in the United States or Canada and approved by the American Osteopathic Association.

Section 9. Fellowship Training in the United States or Canada. The board shall consider on an individual basis written proof of satisfactory completion of fellowship training recognized by the board to be of satisfactory quality as substitution for the second year of required postgraduate training approved by the board pursuant to this administrative regulation.

DANNY M. CLARK, President
APPROVED BY AGENCY: September 5, 2005
FILED WITH LRC: September 9, 2005 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2005 at 10 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify the agency in writing by October 21, 2005, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. 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: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7158.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest
(1) Provide a brief summary of:
   (a) What this administrative regulation does: Establishes requirements for postgraduate training for applicants for medical and osteopathic licenses.
   (b) The necessity of this administrative regulation: Establishes the required duration of prescribed courses of postgraduate training for applicants.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: Establishes requirements for postgraduate training for applicants for medical and osteopathic licenses.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing requirements for postgraduate training for applicants for medical and osteopathic licenses.
   (2) If this is an amendment to an existing regulation, provide a brief summary of:
      (a) How the amendment will change this existing administrative regulation; This amendment will recognize the board's actions over the past several years of granting waivers of one year postgraduate training for applicants who have successfully completed the Oral and Maxillofacial Surgery program.
      (b) The necessity of the amendment to this administrative regulation: Will eliminate need of applicants completing the Oral and Maxillofacial Surgery program of asking for waiver from the board.
      (c) How this amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 311.565 by establishing requirements for postgraduate training for applicants for medical and osteopathic licenses.
      (d) How the amendment will assist in the effective administration of the statutes: This amendment will recognize the board's actions over the past several years of granting waivers of one year postgraduate training for applicants who have successfully completed the Oral and Maxillofacial Surgery program.
      (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,000 applicants each year.
      (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: Will recognize the board's actions over the past several years of granting waivers of one year postgraduate training for applicants who have successfully completed the Oral and Maxillofacial Surgery program.
      (5) Provide an estimate of how much it will cost to implement this administrative regulation:
         (a) Initially: None
         (b) On a continuing basis: None
         (c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None
         (d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.
         (e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation will not establish any increase in fees.
         (9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

RELATES TO: KRS 314.011(12), 314.073, 314.991(1)-(3)
STATUTORY AUTHORITY: KRS 314.073, 314.131(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions. (1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.
(2) "Earning period" means November 1 through October 31 of a current licensure period.
Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation are as follows:

(1) Fourteen (14) contact hours of continuing education which shall:

(a) Be from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period; and

(b) Include the continuing education required by Section 5 of this administrative regulation;

(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

(a) Have been initially attained during the licensure period;

(b) Be issued for a period of time as evidenced by an expiration date, have been in effect during the entire licensure period; or

(c) Have been recertified during the licensure period;

(3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the licensure period:

(a) Completion of a research project that is nursing-related:

1. As principal investigator, coinvestigator, or project director;

2. That is qualitative or quantitative in nature;

3. That utilizes a research methodology;

4. That increases knowledge, causes an improved outcome, or changes behavior, and that is evidenced by an abstract of the project which includes a summary of the findings;

(b) Publication of a nursing-related article;

(c) A nursing continuing education presentation that is:

1. A presentation that is designed and developed by the presenter;

2. Presented to nurses or other health professionals; and

3. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering;

(d) Participation as a preceptor for at least one (1) nursing student or new employee.

1. The preceptorship shall be for at least 120 hours.

2. There shall be a one-to-one relationship between the preceptor and the student or employee.

3. The preceptor may precept more than one (1) student or employee during the 120 hours.

4. The preceptorship shall be evidenced by written documentation from the educational institution or preceptor's supervisor; or

(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period which shall include the continuing education required by Section 5 of this administrative regulation; and

(b) A nursing employment evaluation that is satisfactory for continued employment. The evaluation shall:

1. Cover a period of at least six (6) months during the earning period;

2. Be signed by the nurse's supervisor; and

3. Include the name, address and telephone number of the employer.

Section 4. (1) A licensee shall provide documentation of the methods used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the methods used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1) Registered nurses and licensed practical nurses shall earn a minimum of two (2) contact hours of HIV/AIDS education:

(a) Approved by the Cabinet for Health and Family Services pursuant to KRS 214.610; or

(b) Offered by a provider approved pursuant to 201 KAR 20:220.

(2) Those contact hours shall be earned at least one (1) time every ten (10) years.

(2) Advanced registered nurse practitioners shall earn a minimum of five (5) contact hours in pharmacology.

(3) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(2) All records shall be retained for at least five (5) years following the current licensure period, except for HIV/AIDS education records which shall be maintained for twelve (12) years.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) The board shall furnish within thirty (30) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(d) Except as provided by paragraph (b) of this subsection, if the board determines that a licensee has failed to comply with the continuing competency requirements, he shall be allowed to cure the noncompliance if he:

1. Meets the continuing competency requirements within ninety (90) days of notification of noncompliance;

2. Enters a consent decree with the board; and

3. Pays a civil penalty imposed by the board pursuant to KRS 314.061.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(a) Partial credit for attendance at a continuing education activity shall not be given.

(b) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(c) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(d) A licensee shall not repeat a continuing education offering within a licensure period.

Section 7. (1) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution shall qualify a continuing education activity obtained from an approved provider if relevant to nursing practice under subsection 3 of this section.

(2) Contact hours shall be calculated as follows:

(a) One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours;

(b) One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

(3) The following courses shall be relevant to nursing practice:

(a) A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee;

(b) An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.

(4) A licensee may request course review for approval of applicable nursing content pursuant to Section 8 of this administrative regulation.
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(5) If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

Section 8 (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:
(a) Requested the review by submitting an "Application for Individual Review";
(b) Paid a fee of ten (10) dollars.
(2) The review shall be based on the standards established by:
(a) Sections 2 through 7 of this administrative regulation; and
(b) 201 KAR 20:220.
(3) Approval by the board of a nonapproved continuing education activity shall:
(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and
(b) Be limited to the particular offering upon which the request for individual review is based.

Section 9 Incorporation by Reference. (1) *Application for Individual Review [(1986)].* 97(2005), Kentucky Board of Nursing, is incorporated by reference.
(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY T. ISENBERG, President
APPROVED BY AGENCY: August 19, 2005
FILED WITH LRC: September 9, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:
A public hearing on this administrative regulation shall be held on October 24, 2005, at 9 a.m. ET in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by October 17, 2005, 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 October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3305, fax (502) 696-3338, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman
(1) Provide a brief summary of:
(a) What this administrative regulation does: It sets continuing competency requirements for licensure renewal.
(b) The necessity of this administrative regulation: It is required by statute.
(c) How this administrative regulation conforms to the content of the authorizing statute: By setting requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting 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: It updates an application form.
(b) The necessity of the amendment to this administrative regulation: The application form for individual review needed to be updated, since it had not changed since 1992.
(c) How the amendment conforms to the content of the authorizing statute: The board is authorized to set requirements.
(d) How the amendment will assist in the effective administration of the statutes: By updating the application form.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for license renewal seeking individual review of a continuing education offering, number unknown.
(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: A new application form will be used.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost.
(b) On a continuing basis: No additional cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.
(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.
(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is a fee already established for individual review. It is not increasing.
(8) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 61.674(3), 314.041(8), (10)(d), 314.042(3), (6), 314.051(2), (10)(d), 314.071(1), (2), 314.073(7), 314.142(1)(b), 314.161
STATUTORY AUTHORITY: KRS 61.674(3), 314.041(8), (10)(d), 314.042(3), (6) 314.051(2), (10)(d), 314.071(1), (2), 314.073(7), 314.131(1), 314.142(1)(b), 314.161
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. KRS 314.041(8), (10)(d), 314.042(3), (6), 314.051(2), (10)(d), 314.071(1), (2), and 314.073(7) require the board to establish fees for licensure, registration, examination, renewal, reinstatement, and continuing education. This administrative regulation establishes those fees.

Section 1. Fees for Licensure or Registration Applications. (1)
The board shall collect a fee for:
(a) An application for licensure; 150
(b) An application for registration;
(c) Licensure renewal or reinstatement.
(2) The fee for an application shall be:
(a) Licensure by endorsement as a registered nurse - 150
(b) Licensure by endorsement as a licensed practical nurse - 150
(c) Licensure by examination as a registered nurse - 150
(d) Licensure by examination as a licensed practical nurse - 150
(3) Renewal of license - forty (40) dollars.
(f) Retired status - twenty-five (25) dollars.
(g) Reinstatement of license - 120.
(h) Driver's copy of a renewal application - forty (40) dollars (inclusive of active-license status—ninety-five (95) dollars;)
(i) Full verification of licensure, credential or registration history
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- fifty (50) dollars.
- Duplicate license or registration card or letter - thirty-five (35) dollars.
- Registration as an advanced registered nurse practitioner - $150 [H60].
- Renewal of registration as an advanced registered nurse practitioner - forty (40) dollars
- Reinstatement of registration as an advanced registered nurse practitioner - $120.
- Name change - thirty-five (35) dollars.
- Application to establish a prelicensure program of nursing - $2,000.

Section 3. An application shall not be evaluated unless the current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education or for a renewal or reinstatement of the approval shall be:
- Initial provider approval - $400.
- Reinstatement of provider approval - $400.
- [Bennett] Renewal of approval - $200 [H60].
- Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services. (1) The fee for a service shall be:
- Validation of the current status of a temporary permit, provisional license, license, registration, or credential:
  1. If requested in writing in individual license format - fifty (50) [ten (10)] dollars.
  2. If requested in writing in list format - fifty (50) [ten (10)] dollars for the first name and twenty (20) dollars [one (1)] dollar for each additional name.
  3. If obtained from the board website, one (1) dollar per name.
- Copy of an examination result or transcript - twenty-five (25) [five (5)] dollars.
- Nursing certificate (optional) - thirty (30) dollars.
- Duplicated renewal application form due to failure to maintain current mailing address - twenty-five (25) dollars.

- An applicant for licensure who takes or retakes the licensure examination shall pay:
  1. The current examination fee required by the national council of state boards of nursing; and
  2. Application for licensure fee pursuant to Section 1 of this administrative regulation.

- A graduate of a foreign school of nursing shall be responsible for:
  1. Costs incurred to submit credentials translated into English;
  2. Immigration documents; and
  3. Other documents needed to verify that the graduate has met Kentucky licensure requirements.

Section 4. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:
- For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office; and
- For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office.
- For all other applications, except for renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 5. An applicant who meets all requirements for approval, licensure, credential or registration shall be issued the appropriate approval, license, credential or registration without additional fee.

Section 6. Fees for Sexual Assault Nurse Examiners
- The application fee shall be $120.
- The credential renewal fee shall be thirty-five (35) dollars [forty-five (45)].
- The credential reinstatement fee shall be $120.

Section 7. A payment for an application fee that [which] is in an incorrect amount shall be returned and the application shall not be posted until the correct fee is received.

Section 8. Returned Check Fee. A check submitted to the board for payment of a fee which is returned by the bank for non-payment shall be assessed a returned check fee of thirty-five (35) [twenty-five (25)] dollars.

JIMMY T. ISENBERG, President
APPROVED BY AGENCY: August 19, 2005
FILED WITH LRC: August 31, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on October 24, 2005, at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 17, 2005, 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. Anyone who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

1. Provide a brief summary of:
- What this administrative regulation does: It sets fees for applications and services.
- The necessity of this administrative regulation: The board is required by statutes to set fees.
- How this administrative regulation conforms to the content of the authorizing statute: By setting fees.
- How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting fees.
- If this is an amendment to an existing administrative regulation, provide a brief summary of:
- How the amendment will change this existing administrative regulation: It changes various fees for applications and services.
- The necessity of the amendment to this administrative regulation: The board has reviewed the fees and determined that for the fiscal needs of the agency, certain fees need to be increased.
- How the amendment conforms to the content of the authorizing statute: The board is authorized to set fees.
- How the amendment will assist in the effective administration of the statutes: By setting the appropriate fees.
- List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure as RNs, LPNs, ARNPs, CEN providers, Sexual Assault Nurse Examiners, and new programs of nursing. The exact number is unknown.
- Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Some applicants will pay a higher fee.
- Provide an estimate of how much it will cost to implement this administrative regulation:
  - Initially: no cost.
  - On a continuing basis: no cost.
- What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Gen-
eral agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:280. Standards for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), 314.111(1), 2(3), 314.131(2)

STATUTORY AUTHORITY: KRS 314.111(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 requires the board to review, approve and possibly withdraw approval for schools of nursing. This administrative regulation establishes the standards for the development and approval of programs which prepare graduates for admission to the licensure examination and to facilitate endorsement of licensure status to other states.

Section 1. Establishment of a Program of Nursing. (1) The governing institution may receive consultation from the board prior to filing an application form to establish a program of nursing.

(2) The governing institution shall submit to the board the "Application to Establish a Prelicensure Program of Nursing" and the fee required by 201 KAR 20:280 (a completed application form which is supplied by the board). The application form and the preliminary information shall be submitted to the board no less than one (1) year prior to the anticipated opening date for the program.

(3) The application form shall include:

(a) Approval from the governing body of the institution proposing the program of nursing or other empowered approval bodies as applicable.

(b) Documentation of the need for nurses in the areas to be served by the governing institution.

(c) Consideration given to existing programs of nursing in the area.

(d) Evidence of community support for the program of nursing.

(e) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, and institutional faculty qualifications and resources.

(f) Evidence of a pool of potential applicants for admission.

(g) Evidence of financial resources available for establishing and maintaining the program of nursing.

(h) Documentation of clinical facilities and agencies willing to participate in the program of nursing.

(i) Description and rationale for the proposed type of program of nursing.

(4) The board or any interested party may request that a public hearing be held within thirty (30) days by the board on the application to establish a program of nursing.

(5) The governing institution shall be notified in writing if a hearing is requested. If a request is made, the board shall act on the program proposal until after the hearing is held and consideration is given to the hearing testimony.

(6) A completed program proposal shall be submitted to the board by the governing institution for approval no later than eight (8) months prior to the anticipated opening date for a program of nursing. The program proposal shall include the following information:

(a) Philosophy and objectives of the governing institution.

(b) Organizational chart of the governing institution and written plan which describes the organization of the program of nursing and its relationship to the institution.

(c) Proposed philosophy, objectives, and conceptual or organizing framework of the program of nursing.

(d) Curriculum design including proposed course sequence and credit hours.

(e) Five (5) year projection for student enrollment.

(f) Five (5) year projection for employment of qualified nurse faculty.

(g) Description of educational and clinical facilities.

(h) Description of faculty offices, classrooms, nursing laboratory, library facilities, conference rooms and learning resources.

(i) Description of support services for students, to include health services, academic advisement, personal counseling, and financial aid.

(j) Plans for use of clinical facilities appropriate to the type of program of nursing.

(k) Evidence of cooperative planning with other educational programs that use the same clinical facilities.

(l) Admission criteria.

(m) General plan for evaluation of the program.

(n) Two (2) year budget projection for the program.

(7) A representative of the board shall survey the governing institution and the school of nursing and submit a written report to the board.

(8) The governing institution shall be notified in writing of action taken by the board on the proposal and the survey report.

(9) Approval to establish a program of nursing may be withdrawn if program requirements are not met and if a class is not enrolled within eighteen (18) months after the board granted developmental approval. The governing institution shall be notified in writing of the withdrawal of developmental approval.

(10) Students shall not be admitted to the program of nursing until developmental approval has been granted by the board.

(11) Employment of nurse administrator and faculty.

(a) The nurse administrator shall be the first faculty member employed, and shall have assumed responsibilities for the program before the first class begins nursing major courses.

(b) The faculty shall be employed before the first class begins nursing major courses.

(c) Sufficient numbers of qualified faculty shall be employed to implement the approved proposal.

(d) A faculty qualification form shall be submitted to the board by the nurse administrator for each faculty member upon employment.

(12) The curriculum pattern, including brief course descriptions and credit allotment, shall be approved by the board on or before a date specified by the board before the first class begins course requirements.

(13) Written contracts for use of clinical facilities shall be duly executed.

(14) The governing institution shall submit progress and evaluation reports which demonstrate implementation of the approved proposal as required by the board.

Section 2. Programs and related units that meet standards shall retain approval. (1) Approval purpose. The approval process shall be conducted by the board to assure the public that approved programs of nursing meet board requirements, to determine that minimum standards are met by programs, to prepare graduates for admission to the licensure examination, to facilitate licensure by endorsement, to encourage development and improvement of nursing education.

(2) Approval types and requirements.

(a) Developmental approval is the designation granted to a proposed program of nursing to continue development of plans for program implementation.

(b) Initial approval is the designation granted to a new program of nursing upon admission of the first class, provided the date of enrollment is within eighteen (18) months after the board approves the proposal. During the period of initial approval reports documenting implementation of the approved proposal shall be submitted as required by the board.

(c) Full approval is the designation granted to a program of nursing that has implemented the approved proposal and which continues to meet standards.

1. A program with initial approval is eligible for full approval upon graduation of the first class providing there is evidence that standards have been met.
2. The faculty shall conduct a self-study which evaluates the establishment of the program of nursing according to the approved proposal, and submit a written report to the board prior to consideration for full approval.

3. The decision to grant full approval shall be based upon review of the following:
   a. The program evaluation by the faculty and nurse administrator;
   b. Licensure examination results;
   c. Survey report by the board representative; and
   d. Other facts that pertain to the program; and reports deemed necessary to document that standards have been met.

   (d) Conditional approval is the designation granted to a program of nursing when standards are not met.
   1. The board shall notify the governing institution and the program of nursing when being assigned conditional approval.
   2. The board shall specify deficiencies of the program and a period of time in which standards shall be met.

   3. The board may require the program to limit the number of students that may be admitted to the program of nursing for a specified period of time, prohibit the admission of students to the program of nursing for a specified period of time, or to take other actions deemed appropriate by the board to assist the program of nursing to meet standards.

   (e) Program approval or accreditation awarded by another organization may be recognized by the board, provided the organization's approval standards for programs of nursing have been determined by the board to be equivalent to or to exceed the full approval standards of the board.

Section 3. Withdrawal of Approval. The board may hold a hearing pursuant to KRS 314.111(3) for a program of nursing that fails to comply with Section 2(2)(d) of this administrative regulation. The purpose of the hearing shall be to determine whether or not to withdraw approval from the program of nursing.

   (1) If there is evidence of failure to develop a new program according to the approval proposal, the board may withdraw approval.

   (2) If the decision is made to withdraw approval of the program, provision shall be made by the governing institution for students enrolled in that program to complete the requirements for graduation in order to be eligible to take the licensure examination.

   (3) The governing institution shall be notified in writing of the board's decision. That notification shall cause the institution to make provisions for students remaining in the program, and to discontinue the program at the time designated by the board.

   (4) Students completing a program of nursing which is not approved by the board shall not be admitted to the licensure examination.

Section 4. Voluntary Closure of Approved Program; Change in Ownership or Organization. (1) A governing institution that considers the closing of a program, shall confer with the board and shall notify the board in writing stating the reason, the procedure to be adopted, and date for closing the program. The board shall be kept apprised of the procedures for closing.

   (2) A governing institution may choose one of the following procedures for closing a program:

   a. The governing institution shall continue the program until the last class enrolled is graduated.

   b. The program shall continue to meet the standards for approval until all official students who meet requirements have graduated.

   2. The official closing of the program is the date on the degree, certificate, or diploma of the last graduate.

   3. The governing institution shall notify the board in writing of the official closing date.

   (b) The governing institution shall close the program after the transfer of students to other approved programs.

   1. The program shall continue to meet the standards required for approval until all students are transferred.

   2. The names of students who have been transferred to approved programs and the date of the last student transfer shall be submitted to the governing institution.

   3. The date of the last student transfer shall be the official closing date of the program.

   (c) Custody of records.

   (a) The governing institution which continues to operate retains responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

   (b) The governing institution which ceases to exist shall transfer the academic transcript of each student and graduate to the board office for safekeeping.

   1. The transcript of the student or graduate shall identify the date on which the program closed.

   2. The board shall be consulted about the disposition of all other program records.

   (d) Change in ownership or organization of governing institution.

   (a) The governing institution shall notify the board in writing of any change in ownership or organization.

   (b) Approval of the program shall continue under new ownership provided the approval standards continue to be met.

   (c) The governing institution which changes organizational structure shall retain program approval provided requirements continue to be met.

Section 5. Incorporation by Reference. (1) The Application to Establish a Prelicensure Program of Nursing, KAS 9/99, is incorporated by reference.

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

JIMMY T. ISENBERG, President
APPROVED BY AGENCY: August 19, 2005
FILED WITH LRC: August 31, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2005, at 9 a.m. ET in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Any individual interested in the proposed rule is invited to be heard at this hearing. The proposed rule shall be published in the Kentucky Register on October 17, 2005. Written comments shall be accepted until October 31, 2005. Written comments must be received by the agency at least 30 days prior to the date of hearing.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:
   (a) What the proposed regulation does: It sets standards for RN and LPN prelicensure programs of nursing.

   (b) The necessity of the proposed regulation: The board is required by statute to set these standards.

   (c) How the proposed regulation conforms to the content of the enabling legislation: By setting standards.

   (d) How this proposed regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

   (a) How the amendment will change this existing administrative regulation: It adds a fee to an application for a new program of nursing.

   (b) The necessity of the amendment to this administrative
regulation: The board has determined that the administrative costs of processing and investigating applications for new programs of nursing justify the imposition of a fee.

(c) How the amendment conforms to the content of the authorizing statute: The board is authorized to set fees.

(d) How the amendment will assist in the effective administration of the statutes: By providing for a fee for processing and investigating an application for the establishment of a new program of nursing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: New programs of nursing, number unknown.

(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: The programs will have to pay an application fee.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: No additional 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: General agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It indirectly establishes a fee.

(9) TIERING: Is tiering applied? Tiering was not applied as the charges apply to all equally.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 51:160. NOx requirements for large utility and industrial boilers.

RELATES TO: KRS 224.10-10, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11-75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 U.S.C. 7410

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11-75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the [Natural-Resources-and] Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for the control of nitrogen oxides (NOx) emissions from large boilers and turbines used in power plants and other industrial applications, pursuant to the federal mandate published under the NOx SIP Call. This administrative regulation is not more stringent nor otherwise different than the provisions allowed under the federal mandate.

Section 1. Applicability. This administrative regulation shall apply to NOx budget units that are electric generating (electric-generating) units or industrial boilers or turbines, except as provided in Section 2 of this administrative regulation.

Section 2. Exemptions. (1) Exemptions based on permit limitations. A NOx budget unit shall be exempt from Sections 3 to 7(9) of this administrative regulation if the owner or operator complies with this subsection.

(a) The source shall have a federally-enforceable permit issued by the cabinet containing conditions for the unit that:
1. Limit the unit's NOx emissions during each control period beginning in 2004 to twenty-five (25) tons or less;
2. Restrict the unit to burning only natural gas or fuel oil during a control period in 2004 and each control period thereafter;
3. Restrict the unit's operation hours during each control period to the number calculated by dividing twenty-five (25) tons of potential NOx mass emissions by the unit's maximum potential hourly NOx mass emissions;
4. Require that the unit's potential NOx mass emissions shall be calculated pursuant to 40 C.F.R. 86.4b(1)(v)(c);
5. Require that the owner or operator of the unit shall retain at the source that includes the unit, for five (5) years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met; and
6. Require that, by November 1 of each year for which the unit is subject to the federally-enforceable permit, the owner or operator of the unit, through the authorized account representative, shall:
   a. Secure and transfer to an account established pursuant to 401 KAR 51.190, NOx allowances for each control period in an amount equal to the NOx emission limitation (in tons of NOx) under subparagraphs 1 and 3 of this paragraph upon which the unit's exemption is based; and
   b. Report to the cabinet the unit's hours of operation (treating any partial hour of operation as a whole hour of operation) and the number of NOx allowances transferred pursuant to clause a of this subparagraph.

(b) A unit with an exemption based on permit limitations shall become subject to all the applicable provisions of this administrative regulation and shall be treated as commencing commercial operation on September 30 of any control period for which:
1. The fuel use restriction in paragraph (a)(3) of this subsection or the operating hours restriction in paragraph (a)(3) of this subsection is removed from the unit's federally-enforceable permit or otherwise becomes no longer applicable; or
2. The unit does not comply with the restrictions of this subsection.

(c) Units exempted under this subsection shall not receive a NOx allowance allocation under Section 4 of this administrative regulation.

(d) By November 30 of each year beginning in 2004, the cabinet shall report to the U.S. EPA:
1. The total NOx emission limitation (in tons of NOx) for all units exempted under this subsection; and
2. The total NOx allowances reported to the cabinet pursuant to paragraph (a)6b of this section.

(e) For units exempted under this subsection, the cabinet shall notify the U.S. EPA, in writing:
1. Of permit changes that remove a limit or render it no longer applicable; and
2. Any violation of a permit limit imposed pursuant to paragraph (a) of this subsection.

(2) Retired unit exemption.

(a) A NOx budget unit shall be exempt from the requirements in Sections 3 to 7 of this administrative regulation on the date that the unit is permanently retired, if the following conditions are met:
1. Except as provided in paragraph (b) of this subsection, the retired unit shall not emit NOx on or after the day it is retired; and
2. Within thirty (30) days after the unit is retired, the NOx authorized account representative shall submit:
   a. A letter to the cabinet and to the U.S. EPA describing the unit, the date of retirement, and the reason for retirement; and
   b. An application for an permit revision that reflects the status of the retired unit pursuant to 401 KAR 52:020 or 401 KAR 52:030, as appropriate; and
3. Unless the unit has been physically removed, records to demonstrate that the unit has not been operated shall be:
   a. Maintained on-site for five (5) years from the date of retirement; and
   b. Made available to the cabinet or the U.S. EPA upon request.

(b) Operation of a retired unit shall not be resumed unless the owner or operator submits an application and receives a permit revision pursuant to 401 KAR 52:020 or 401 KAR 52:030, as appropriate, prior to commencing operation.

(c) A retired unit shall not be allowed to opt into 401 KAR 51:190, Banking and trading NOx allowances and shall not receive...
a NOx allowance allocation under Section 4 of this administrative regulation.

(d) NOx allowances made to a unit that later retires shall:
1. Remain with the unit until they are transferred or deducted; and
2. Cease to be allocated to the unit at the end of the allocation period.

(e) The cabinet shall notify the U.S. EPA, in writing, of units that are exempted under this subsection.

(3) Category exemption. A carbon monoxide boiler that is associated with fluidized catalytic cracking units (FCCU) at petroleum refineries shall be exempt from the requirements in Sections 3 to 7 of this administrative regulation.

Section 3. Compliance Requirements. (1) NOx budget emission limitations requirements. Commencing with the later of May 31, 2004, or the year the unit commences operation, the owner or operator of a NOx budget unit shall:

(a) Beginning May 1, 2003, and May 1 of each year thereafter, monitor the total NOx emissions during each control period as specified in 40 C.F.R. 96.70 to 96.76; and
(b) By November 30 of each year, hold NOx allowances available for compliance deductions in an amount at least equal to the total NOx emissions during the control period as specified in 401 KAR 51:190.

(2) NOx allowance provisions. NOx allowances shall be held in, deducted from, or transferred among the NOx compliance, overdraft, and general accounts as specified in 401 KAR 51:190 and in this subsection.

(a) The NOx budget source shall establish a general account in the NOx allowance Tracking System (NATS) by submitting "EPA Form 7620-15, General Account Information".
(b) NOx budget units shall transfer NOx allowances under the NOx Budget Trading Program from one (1) account to another in the NOx Allowance Tracking System (NATS) by submitting "EPA Form 7620-14.14".
(c) NOx allowances shall not be deducted for compliance with subsection (1) of this section for a control period prior to the year for which the NOx allowances were allocated.

(d) If the U.S. EPA records the allocation, transfer, or deduction of NOx allowances from the compliance or overdraft account of a NOx budget source, the action shall:
1. Automatically amend and become part of the NOx budget portion of the source's permit; and
2. Require no further review.

(e) The owner or operator of a NOx budget unit having excess NOx emissions for each control period beginning in 2004, shall comply with 401 KAR 51:190.

(f) Allocated NOx allowances shall not constitute a property right.

(3) Recordkeeping and reporting requirements.

(a) The owner or operator of a NOx budget source shall maintain the following records:
1. The "Account Certificate of Representation" for the source's NOx authorized account representative;
2. Emissions monitoring information as specified in 40 C.F.R. 96.70 to 96.76;
3. Copies of all reports, compliance certifications, and other submissions and records required by 401 KAR 51:190; and
4. Copies of documents used to complete permit revision applications or to demonstrate compliance with 401 KAR 51:190.

(b) These records shall be:
1. Used to demonstrate compliance with subsection (1) of this section;
2. Maintained on site for a period of five (5) years, unless a longer period is required by 40 C.F.R. 96.70 to 96.76 or the cabinet or the U.S. EPA requires an extended period for cause; and
3. Made available for inspection on request by the cabinet or the U.S. EPA.

(4) Compilation of time:

(a) A time period scheduled to begin on the occurrence of an act or event shall begin on the day the act or event occurs.
(b) A time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) If the final day of a time period falls on a weekend or state or federal holiday, the time period shall be extended to the next business day.

Section 4. Methodology for the Allocation and Sale of NOx Allowances. The number of NOx allowances to be allocated to each NOx budget unit by the cabinet and to be sold by the Commonwealth of Kentucky shall be determined pursuant to this section.

(1) The total number of NOx allowances shall be the number of NOx allowances assigned to Kentucky by the U.S. EPA and approved in Kentucky's State Implementation Plan (SIP).
(2) The total number of NOx allowances assigned to Kentucky shall be divided into separate pools as follows:
(a) The number of NOx allowances specified in Kentucky's approved SIP for electric generating units with:

1. Ninety-five (95) percent of this amount allocated for the 2004 to 2006 allocation period to units that commence commercial operation on or before May 1, 2001;
2. Five (5) percent of this amount for the 2004 to 2006 allocation period sold by the Commonwealth of Kentucky with the proceeds deposited in Kentucky's general fund;
3. Ninety-eight (98) percent of this amount allocated for each allocation period beginning with the 2007 to 2009 allocation period to units that commence commercial operation on or before May 1 of the year that is three (3) years before the first year of the applicable allocation period; and

(b) The number of NOx allowances specified in Kentucky's approved SIP for industrial boilers or turbines with:

1. Ninety-eight (98) percent of this amount allocated for each allocation period to units that commence commercial operation on or before May 1 of the year that is three (3) years before the first year of the applicable allocation period; and
2. Two (2) percent of this amount for each allocation period allocated for each allocation period to NOx budget units that commence commercial operation after May 1 of the year that is three (3) years before the first year of the applicable allocation period and on or before May 1 of the applicable control period.

(3) The cabinet shall notify the U.S. EPA and NOx budget sources of the NOx allowances to be allocated and sold from the pools specified in subsection (2) of this section pursuant to Section 5(4) of this administrative regulation.

(4) For allocation of the pools specified in subsection (2)(a), 1, and (b) of this section, heat input, in MMBTU, of a NOx budget unit shall be determined from:

(a) The average of the two (2) highest amounts of the unit's heat input from the three (3) most recent control periods as determined in accordance with 40 C.F.R. Part 75 or 96.70 to 96.76 if the unit is subject to 40 C.F.R. Part 75; or
(b) The best available data reported to the cabinet for the unit if the unit is not otherwise subject to 40 C.F.R. Part 75.

(5) For electric generating units included in the pools specified in subsection (2)(a) and 3 of this section, the cabinet shall allocate NOx allowances to each NOx budget unit in an amount equal to the result obtained by:

(a) Multiplying 0.15 lb/MMBTU by the permit limit, whichever is less, by the heat input determined under Section 4(4) of this administrative regulation, rounded to the nearest whole NOx allowance as appropriate.
(b) If the initial total number of NOx allowances allocated for an allocation period to all NOx budget units in Kentucky included in the pools specified in subsection (2)(a) and 3 of this section does not equal ninety-five (95) percent for the 2004 to 2006 allocation period, or ninety-eight (98) percent for each allocation period thereafter, of the number of tons of NOx emissions in Kentucky's trading program budget apportioned to existing electric generating units, the cabinet shall:

1. Adjust the total number of NOx allowances allocated to all electric generating units in the applicable pool so that the total
number of NOx allowances allocated equals ninety-five (95) percent for the 2004 to 2006 allocation period, or ninety-eight (98) percent for each allocation period thereafter, of the number of tons of NOx emissions in Kentucky's trading program budget apportioned to electric generating units; and

2. Make this adjustment by multiplying each unit's allocation by ninety-five (95) percent for the 2004 to 2006 allocation period, or ninety-eight (98) percent thereafter, of the number of tons of NOx emissions in Kentucky's trading program budget apportioned to electric generating units divided by the total number of NOx allowances allocated under paragraph (a) of this subsection, and rounding to the nearest whole NOx allowance as appropriate.

(6) For industrial boilers or turbines included in the pool specified in subsection (2)(b)1 of this section, the cabinet shall allocate NOx allowances to each NOx budget unit in an amount equal to the result obtained by:

(a) Multiplying 0.17 lb/MMBTU or the permit limit, whichever is less, by the heat input determined under subsection (4) of this section, rounded to the nearest whole NOx allowance as appropriate.

(b) If the initial total number of NOx allowances allocated for an allocation period to all NOx budget units in Kentucky included in the pool specified in subsection (2)(b)1 of this section does not exceed ninety-eight (98) percent for each allocation period, of the number of tons of NOx emissions in Kentucky's trading program budget apportioned to existing industrial boilers or turbines, the cabinet shall:

1. Adjust the total number of NOx allowances allocated to all industrial boilers or turbines in the applicable pool so that the total number of NOx allowances allocated equals ninety-eight (98) percent for each allocation period, of the number of tons of NOx emissions in Kentucky's trading program budget apportioned to industrial boilers or turbines; and

2. Make this adjustment by multiplying each unit's allocation by ninety-eight (98) percent, of the number of tons of NOx emissions in Kentucky's trading program budget apportioned to industrial boilers or turbines divided by the total number of NOx allowances allocated under paragraph (a) of this subsection, and rounding to the nearest whole NOx allowance as appropriate.

(7)(a) The Commonwealth of Kentucky shall establish an account pursuant to 401 KAR 51:190 for the purpose of selling the NOx allowances in the pools specified in subsection (2)(a) and 4 of this section. The proceeds from the sale of the NOx allowances shall be deposited in the general fund of the Commonwealth of Kentucky.

(b) For NOx budget units included in the pool specified in subsection (2)(b)2 of this section, the cabinet shall allocate NOx allowances to each unit according to the following procedures:

1. The cabinet shall establish one (1) allocation set-aside for each control period. Each allocation set-aside shall be allocated NOx allowances equal to two (2) percent of the number of the tons of NOx emissions in Kentucky's trading program budget, rounded to the nearest whole NOx allowance as appropriate.

2. The NOx authorized account representative may submit to the cabinet a request, in writing, to be allocated NOx allowances starting with the control period during which the NOx budget unit commences commercial operation, or is projected to commence commercial operation, and ending with the control period preceding the control period for which it will receive an allocation under subsection (2)(b)1 of this section.

a. The NOx allowance allocation request shall be submitted prior to May 1 of the first control period for which the NOx allowance allocation is requested and after the date on which the cabinet issues a permit to construct to the NOx budget unit; and

b. For a control period, the NOx authorized account representative may request NOx allowances in an amount that does not exceed 0.17 lb/MMBTU or the permit limit, whichever is less, multiplied by the NOx budget unit's maximum design heat input in MMBTU/hr multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(iii) The cabinet shall notify the U.S. EPA and NOx budget sources of the NOx allowances to be allocated and sold by the Commonwealth of Kentucky pursuant to this section and Section 4 of this administrative regulation.

(iv) If the NOx budget unit's maximum design heat input in MMBTU/hr is greater than 1,000, the cabinet shall establish a higher allocation set-aside percentage for that control period, not to exceed one (1) percent of the nox emissions in Kentucky's trading program budget apportioned to the NOx budget unit for that control period.
of this administrative regulation.

(a) For units that commence commercial operation on or before May 1 of the year that is three (3) years before the first year of the applicable allocation period:
1. Not later than sixty (60) days after the effective date of this administrative regulation for the allocation period beginning in 2004; and
2. By April 1 of the year that is three (3) years prior to the next allocation period; and
(b) By April 1 of each year, beginning in 2004, for units in the pool specified in Section 4(2)(b) of this administrative regulation that commence commercial operation after May 1 of the year that is three (3) years before the first year of the applicable allocation period and on or before May 1 of the applicable control period.

(5) Excess NOx allowances may be banked and traded according to 401 KAR 51:190.

Section 6. Application for NOx Budget Permit or Permit Revision. (1) The NOx authorized account representative of a NOx budget source shall submit an application to revise the source’s permit pursuant to 401 KAR 52:020 or 401 KAR 52:030, as appropriate, and this section. For this purpose, the source shall use:
(a) “Forms DEP7007A1 to DD. Permit Application to Construct or Operate an Air Contaminant Source,” as applicable. Forms DEP7007A1 to DD is incorporated by reference in 401 KAR 52:050; and
(b) "Form DEP7007EE, NOx Budget Permit Application".

(2) The application shall include the following information:
(a) The Office of Regulatory Information Systems (ORIS) or facility code assigned to the source by the Energy Information Administration;
(b) Identification of:
1. Each NOx budget unit at the source;
2. Each retired unit; and
3. Each unit exempted pursuant to Section 2(1) of this administrative regulation;
(c) A statement that explains if the unit is:
1. A unit described in Section 1 of this administrative regulation; or
2. An opt-in unit pursuant to 401 KAR 51:195;
(d) The applicable requirements of Section 3 of this administrative regulation; and
(e) For opt-in units, the following certification statement signed by the NOx authorized account representative: “I certify that each unit for which this permit application is submitted, pursuant to the opt-in provisions of 401 KAR 51:195, is operating; is not a NOx budget unit pursuant to 401 KAR 51:160, Section 1; and is not covered by a retired exemption unit that is in effect pursuant to 401 KAR 51:160, Section 2(3).”

Section 7. Compliance. (1) Compliance certification. On or before November 30 each year, beginning in 2004, the NOx authorized account representative shall submit a compliance certification report to the cabinet and to the U.S. EPA pursuant to 401 KAR 51:190.

(2) Reporting to the cabinet. Reports that are required to be submitted to the cabinet shall be mailed to:
1. Manager, Permit Review Branch, Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601; and
2. To the appropriate Regional Office of the Division for Air Quality listed in Section 8(3) of the administrative regulation.

Section 8. Incorporation by reference. (1) The following material is incorporated by reference:
(a) [40 C.F.R. 93.70 to 93.76, “Monitoring and Reporting”, as published in the Code of Federal Regulations, 40 C.F.R. Part 93, July 1, 1996;
(b) "Form DEP7007EE, NOx Budget Permit Application", May 2002;
(b) [40 C.F.R. 96.30-96.75, “EPA Form 7620-14, Allowance Transfer”, United States Environmental Protection Agency, OMB No. 2060-0445;
(c) [40 C.F.R. 96.30-96.75, “General Account Information”, United States Environmental Protection Agency, OMB No. 2060-0445; and
(d) [40 C.F.R. 96.30-96.75, “EPA Form 7620-15, Account Certificate of Representation”, United States Environmental Protection Agency, OMB No. 2060-0445.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:
(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382; and
(b) The appropriate regional office of the Division for Air Quality as follows:
1. Ashland Regional Office, 1550 Wolohan Drive, Suite 1, 3700 Thirteenth Street, Ashland, Kentucky 41102 (414-406), (606) 929-5285 (960-9067);
2. Bowling Green Regional Office, 1508 Westham Avenue, Bowling Green, Kentucky 42104, (270) 746-1747;
3. Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (659) 525-4923;
4. Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;
5. London Regional Office, 875 South Main Street, London, Kentucky 40741, (606) 878-0157;
6. Owensboro Regional Office, 1023 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 677-7304; or [and
7. Paducah Regional Office, 130 Eagle Nest Drive (4699), Clarke River Road, Paducah, Kentucky 42003, (270) 898-8468.

(b) Copies of Forms DEP7007EE to EE-3 are available on the Internet at http://www.air.ky.gov/permitting/permit-application-forms.htm.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: September 9, 2005
FILED WITH LRC: November 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2005, at 10 a.m. local time in the Conference Room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 5 workdays prior to the hearing, of their intent to attend. 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. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the hearing or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least 5 workdays prior to the hearing.

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3302, fax (502) 573-3787, and email gerry.ennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerry Ennis
(1) Provide a brief summary of:
(a) What this administrative regulation does: The proposed administrative regulation requires the reduction of nitrogen oxide (NOx) emissions from large utility and industrial boilers in order to comply with the federally mandated NOx SIP Call.
(b) The necessity of this administrative regulation: Kentucky is one of 21 states required by the U.S. EPA to lower NOx emissions. This administrative regulation complies with this mandate.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-010(5) requires the cabinet to promulgate administrative regulations for the prevention, abate-
VOLUME 32, NUMBER 4 – October 1, 2005

ment, and control of air pollution. This regulation will result in the reduction of NOx emissions from large utility and industrial boilers.

(d) This administrative regulation currently assists or will assist in the effective administration of the statute. This regulation contains the means required for achieving the federally mandated emissions reductions from large utility and industrial boilers.

(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 proposes to exempt carbon monoxide (CO) boilers associated with fluidized catalytic cracking units (FCCUs) at petroleum refineries from the requirements of the NOx SIP Call Inventory.

(b) The necessity of the amendment to this administrative regulation: Regulating FCCU-CO boilers at oil refineries under the NOx trading program is not only inconsistent across the affected states but also involves significant costs to the affected facility and the regulating agencies. Because the U.S. EPA allows each affected state the option to include in its NOx Inventory, either all or none of these FCCU-CO boilers, they are not required to be part of the NOx trading program.

(c) How the amendment conforms to the content of the the armons statements. The amendment will exempt CO boilers associated with FCCUs from the NOx SIP Call Inventory. This exemption is consistent with EPA’s applicability statement for the NOx SIP Call.

(d) How the amendment will assist in the effective administration of the statute: The amendment further clarifies the NOx SIP Call provisions and requirements for regulated sources subject to the federal mandate. Removing the FCCU-CO boilers from the NOx SIP Call Inventory will result in a greater benefit to CO emissions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. About 55 sources will remain subject to the requirements of this regulation. Only one source, Marathon Ashland Petroleum (MAP), located in Boyd County, will be affected by the exemption removing its CO boilers removed from the NOx Trading Program.

(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: This amendment will have significant impact on Marathon-Ashland Petroleum by reducing its annual operating costs associated with monitoring and reporting, because the units are no longer subject to the requirements in 40 C.F.R. Part 75, Trading Program. Additionally, the facility will lose the option of selling emissions credits, thereby reducing its income potential.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this amendment.

(b) On a continuing basis: There will be no continuing costs for the 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 cabinet’s current operating budget will be used for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The amendment does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, this amendment exempts CO boilers associated with FCCUs from the requirements in Sections 3 through 7 of this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal Clean Air Act (42 U.S.C. 7401 to 7671q) requires states to implement a plan (SIP) that will achieve and maintain the National Ambient Air Quality Standards (NAAQS), and authorizes the U.S. EPA to determine the adequacy of the SIP.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to regulate large utility and industrial boilers for the reduction of nitrogen oxide (NOx) emissions.

4. Will the 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. This administrative regulation will not impose stricter standards, or additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect? This administrative regulation will affect any unit, part or division of local government operating a unit that meets the applicability determination of Section 1.

3. State the aspect or service of local government to which this administrative regulation relates? This administrative regulation will affect any government-owned generator with a nameplate capacity greater than 25 Mwe that sells electricity and any other unit with a maximum design heat input greater than 250 million BTU/hr.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government 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. Revenues (+/-): Any effect on current revenues is unknown. Expenditures (+/-): While potential costs cannot be quantified, this administrative regulation is more cost efficient than a Federal Implementation Plan.

Other Explanation: There is no other explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)


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 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 Kentucky State Penitentiary.

Section 1. Incorporation by Reference. (1) Kentucky State Penitentiary policies and procedures, September 14, 2005 [March 11, 2004], are incorporated by reference. Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01 Public Information and Media Communications
(Amended 9/1/2005 [9/14/04])
KSP 02-01-02 Inmate Classification
(Amended 9/12/2005 [9/24/04])
KSP 02-08-02 Inventory Control and Warehouse Operations
(Amended 3/11/04)
KSP 02-11-01 Requisition and Purchase of Supplies and Equipment (Amended 9/14/2005 [4/14/04])
KSP 02-12-02 Innate Funds (Amended 3/11/04)
KSP 05-02-01 Management Information System (Amended 9/14/2005 [4/12/01])
KSP 06-01-01 Inmate Records (Amended 10/14/02)
KSP 06-01-02 Inmate Master Records (Amended 9/14/2005)
KSP 10-02-01 Special Management Operating Procedures, Living Conditions and Classification (Amended 9/14/2005 [7/8/03])
KSP 10-02-05 Death Row [Special Security Unit] (Amended 9/14/2005 [3/4/03])
KSP 10-04-01 Special Needs Inmates (As Amended 9/14/2005 [6/4/04])
KSP 11-06-01 Food Service Inspections (Amended 9/14/2005 [4/12/02])
KSP 13-01-01 Pharmacy Procedures (Amended 9/14/2005 [4/14/99])
KSP 13-02-01 Health Services (Amended 9/14/2005 [4/14/99])
KSP 13-02-02 Organization of Medical Services (Amended 9/14/2005 [4/14/99])
KSP 13-02-03 Continuity of Care (Amended 9/14/2005 [4/14/99])
KSP 13-02-04 Levels of Care and Staff Training (Amended 9/14/2005 [4/4/99])
KSP 13-02-05 Consultations (Amended 9/14/2005 [4/14/99])
KSP 13-02-08 Health Records (Amended 9/14/2005 [4/14/99])
KSP 13-02-09 Psychiatric and Psychological Services (Amended 9/14/2005 [7/8/03])
KSP 13-02-13 Procedural Guidelines for Special Management Units (Added 7/15/99)
KSP 13-02-13 Optometric Services (Amended 9/14/2005 [4/8/99])
KSP 13-06-02 Informed Consent (Amended 9/14/2005 [Added 4/14/99])
KSP 14-03-01 Marriage of Inmates (Amended 9/14/2005 [10/4/03])
KSP 14-04-01 Legal Services (Amended 9/14/2005 [10/4/03])
KSP 14-06-01 Inmate Grievance Procedure (Amended 9/14/2005 [Added 3/4/93])
KSP 15-06-01 Adjustment Procedures (Amended 9/14/2005 [4/14/93])
KSP 16-01-01 Visiting Program (Amended 9/14/2005 [4/14/99])
KSP 16-02-01 Inmate Correspondence (Amended 9/14/2005 [4/14/99])
KSP 16-03-02 Inmate Telephone Access (Amended 9/14/2005 [4/4/99])
KSP 16-04-01 Inmate Packages (Amended 9/14/2005 [7/12/99])
KSP 17-01-01 Inmate Personal Property (Amended 9/14/2005 [Effective 3/15/97])
KSP 17-01-02 Disposition of Unauthorized Property (Amended 9/14/2005 [Effective 3/15/97])
KSP 17-01-03 Procedures for Providing Clothing, Linens and Other Personal Items (Amended 9/14/2005 [4/14/94])
KSP 17-01-04 Property Room, Clothing Storage and Property Inventory Control (Amended 9/14/2005 [4/14/93])
KSP 17-02-01 Inmate Reception and Orientation (Amended 9/14/2005 [4/14/92])
KSP 18-01-01 General Guidelines and Functions of the Classification Committee (Amended 9/14/2005 [4/14/99])
KSP 18-06-01 Classification Document (Amended 9/14/2005 [7/12/99])
KSP 18-10-01 Preparole Progress Report (Amended 9/14/2005 [7/12/99])
KSP 18-15-01 Protective Custody Unit (Amended 9/14/2005 [4/14/99])
KSP 19-04-01 Inmate Work Programs and Safety Inspections of Inmate Work Locations (Amended 7/12/00)
KSP 19-04-02 Unit Classification Committee and Inmate Work Assignments (Amended 3/11/03)
KSP 19-05-01 Correctional Industries (Amended 9/14/2005 [4/14/93])
KSP 20-04-01 Educational Programs (Amended 4/15/02)
KSP 22-04-01 Arts and Crafts Program (Amended 12/12/01)
KSP 23-01-03 Religious Services (Amended 9/14/2005 [Added 12/14/94])
KSP 25-01-01 Release Preparation Program (Added 12/12/01)
KSP 25-01-02 Inmate Release Procedure (Amended 9/14/2005 [7/8/03])
KSP 25-10-01 Discharge of Inmates by Shock Probation (Added 7/12/00)

(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, Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40620-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: September 12, 2005
FILED WITH LRC: September 14, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 125 Holmes Street, Second Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Carlton Shier, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, ext. 246, fax (502) 564-6886.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trena C. Rogers
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Kentucky State Penitentiary, including the rights and responsibilities of Kentucky State Penitentiary employees and the inmate population.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 195.035 and 197.020.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of Kentucky State Penitentiary.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to Kentucky State Penitentiary employees and the inmate population as to their duties, rights, privileges, and responsibilities.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments bring Kentucky State Penitentiary in compliance with ACA Standards, show compliance with CPP, and show actual practice of the institution.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 195.035 and 197.020.
(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 Kentucky State Penitentiary.
(d) How the amendment will assist in the effective administration of the statutes: This will help Kentucky State Penitentiary to operate more efficiently.
JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections (Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commis-
sioner 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 Bell County Forestry
Camp.

Section 1. Incorporation by Reference. (1) "Bell County For-
aternity Camp Policies and Procedures", September 14, 2005 [Octo-
ber 15, 2009], is incorporated by reference. Bell County Forestry Camp Policies and Procedures:

BCFC 01-01-01 Establishment of the BCFC Institutional Opera-
tions Manual (Added 10/15/01)
BCFC 01-01-02 Organization of BCFC Operations Manual
(Added 10/15/01)
BCFC 01-01-03 Formulation and Revision of BCFC Operating
Procedure (Added 10/15/01)
BCFC 01-03-01 Meetings Conducted and Their Purpose (Added
10/15/01)
BCFC 01-04-01 Monthly Reports (Added 10/15/01)
BCFC 01-02-01 Organization and Assignment of Responsibility
(Added 10/15/01)
BCFC 01-06-01 Inmate Access To, and Communication With
BCFC (Added 10/15/01)
BCFC 01-05-01 Monitoring of Operations, Policies and Proce-
dures (Amended 10/15/01)
BCFC 01-08-01 Public Information and News Media Access
(Added 10/15/01)
BCFC 01-10-01 Cooperation With Outside Bodies Including
Courts, Legislative, Executive, Governmental and
Community Agencies (Added 10/15/01)
BCFC 01-11-01 Institutional Duty Officer (Amended 10/15/01)
BCFC 01-12-01 Tours of Bell County Forestry Camp (Added
10/15/01)
BCFC 01-13-01 Annual Planning Document (Amended
10/15/01)
BCFC 02-01-01 Inmate Communication (Amended 10/15/01)
BCFC 02-02-01 Wardens Fund (Added 10/15/01)
BCFC 02-03-01 Purchasing (Amended 10/15/01)
BCFC 02-04-01 Fiscal Management: Organization, Accounting
Insurance and Audit (Amended 10/15/01)
BCFC 02-05-01 Budget Administration (Amended 10/15/01)
BCFC 02-06-01 Nonexpendable Personal Property (Added
10/15/01)
BCFC 02-06-02 Materials Receiving and Control (Amended
10/15/01)
BCFC 02-07-01 Imprest Cash Fund (Amended 10/15/01)
BCFC 02-08-01 Prisoners Fund (Amended 10/15/01)
BCFC 03-01-01 Code of Ethics (Added 10/15/01)
BCFC 03-02-01 Criminal History Checks on all Personnel and
the Employment of Exoffenders (Added 10/15/01)
BCFC 03-03-01 Employee Physicals (Added 10/15/01)
BCFC 03-04-01 Personnel Files (Added 10/15/01)
BCFC 03-05-01 Selection, Retention and Promotion of Employ-
ees (Added 10/15/01)
BCFC 03-06-01 Performance Evaluation (Added 10/15/01)
BCFC 03-07-01 Hours of Work, Inclement Weather, Leave Re-
quest and Sick Time (Amended 10/15/01)
BCFC 03-08-01 Confidentiality of Information (Added 10/15/01)
BCFC 03-09-01 Kentucky Employees Assistance Program
(Added 10/15/01)
BCFC 03-10-01 Employee Handbook (Added 10/15/01)
BCFC 03-11-01 Replacement of Damaged or Destroyed Per-
sonal Property (Added 10/15/01)
BCFC 03-12-01 Drug Free Work Place (Added 10/15/01)
BCFC 04-01-01 Employee Training and Development (Added
10/15/01)
BCFC 05-01-01 Information System (Amended 10/15/01)
BCFC 05-02-01 Consultants, Research, and Student Interns
(Added 10/15/01)
BCFC 06-01-01 Offender Records (Amended 10/15/01)
BCFC 06-02-01 Storage of Expunged Records (Amended
10/15/01)
BCFC 06-03-01 Court Trips (Amended 10/15/01)
BCFC 06-03-02 Receipt of Order of Appearance (Amended
10/15/01)
BCFC 07-02-01 Preventative Maintenance Plan (Added
10/15/01)
BCFC 07-04-01 Smoking Control (Amended 10/15/01)
BCFC 07-05-01 Permit Required Confined Space (Amended
10/15/01)
BCFC 07-06-01 Control of Hazardous Energy (Amended
10/15/01)
BCFC 08-02-01 Fire Prevention (Amended 10/15/01)
BCFC 08-03-01 Fire Procedures (Amended 10/15/01)
BCFC 08-03-02 Fire Extinguishers and Their Use (Amended
10/15/01)
BCFC 08-09-01 Guidelines for the Control and Use of Flamma-
able, Toxic, and Caustic Substances (Amended
10/15/01)
BCFC 09-01-01 Establishment of Security Posts and Post Or-
ders at BCFC (Added 10/15/01)
BCFC 09-02-01 Security Activity Logs (Added 10/15/01)
BCFC 09-03-01 Institutional Security Inspections (Added
10/15/01)
BCFC 09-05-01 Entry and Exit Onto Institutional Grounds
(Added 10/15/01)
BCFC 09-06-01 Search Policy: Disposition of Contraband
(Added 10/15/01)
BCFC 09-06-03 Disposition of Contraband Found Outside Insti-
tutional Perimeter (Added 10/15/01)
BCFC 09-08-01 Drug Abuse Testing (Added 10/15/01)
public hearing on this administrative regulation shall be held on October 26, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 125 Holmes Street, Second Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Carlton Shier, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, ext. 246, fax (502) 504-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trena C. Rogers

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Bell County Forestry Camp including the rights and responsibilities of employees and the inmate population.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Bell County Forestry Camp.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment brings the Bell County Forestry Camp 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, 197.020, and 197.025(6).
(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Bell County Forestry Camp.
(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the penal institutions.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Bell County Forestry Camp 46 employees and 250 inmates, and all visitors to the institution.
(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: Staff and inmates will have to follow the changes made in the policies and procedures.
(b) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Bell County Forestry Camp budgeted funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Budgeted Funds.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.
(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it. 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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470(2), 439.590, 439.640(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470(2), 439.590, and 439.640(2) authorize the Justice 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 Eastern Kentucky Correctional Complex.

Eastern Kentucky Correctional Complex Policies and Procedures include:

EKCC 01-02-02 Public Information and News Media Access
EKCC 01-06-01 Inmate Death (Amended 6/12/02)
EKCC 01-06-02 Crime Scene Camera
EKCC 01-07-01 Institutional Tours of EKCC
EKCC 01-07-02 EKCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive, and Community Agencies
EKCC 01-07-03 Outside Consultation and Research
EKCC 01-06-01 Monthly Reports
EKCC 01-09-01 Duty Officer Responsibilities (Amended 6/12/02)
EKCC 01-10-01 Annual Planning Document and Conference
EKCC 01-10-02 Organization and Assignment of Responsibility
EKCC 01-10-03 Institutional Planning
EKCC 01-13-01 Organization of Operations Manual (Amended 8/13/02)
EKCC 01-13-02 Monitoring of Operations, Policies and Procedures
EKCC 01-13-03 Formulation and Revision of EKCC Operating Procedure (Amended 8/13/02)
EKCC 01-13-04 Meetings Conducted and Their Purpose
EKCC 02-01-02 Inmate Cantex (Amended 6/12/02)
EKCC 02-02-01 Fiscal Management: Agency Funds (Amended 6/12/02)
EKCC 02-05-01 Fiscal Management: Budget
EKCC 02-06-02 Warehouse Operation and Inventory Control
EKCC 02-06-03 Inventory Control, Nonexpendable Items
EKCC 02-08-04 Warehouse Policy and Procedure
EKCC 02-11-01 Purchase and Supply Requisition
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EKCC 02-12-01 Fiscal Management - Audits
EKCC 02-13-01 Fiscal Management - Accounting Procedures (Amended 6/12/02)
EKCC 02-14-01 Screening Disbursements from Inmate Personal Accounts (Amended 6/12/02)
EKCC 04-01-01 Staff Participation in Professional Organizations and Conferences; Provision for Leave and Reimbursement for Expenses
EKCC 04-02-01 Emergency Preparedness Training
EKCC 04-02-02 Advisory Training Committee
EKCC 05-01-01 Inmate Participation in Authorized Research
EKCC 05-02-01 Information System
EKCC 06-01-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers
EKCC 06-03-01 Case Record Management
EKCC 10-02-01 Special Management Unit: Operating Procedures and Living Conditions
EKCC 10-02-02 Special Management Inmates: Assignment, Classification, Reviews and Release
EKCC 10-02-03 Grooming Standards for Special Management
EKCC 11-02-01 Meal Planning for General Population
EKCC 11-02-02 Food Service: Purchasing, Storage and Farm Products
EKCC 11-03-01 Food Service: Menu, Nutrition and Special Diets
EKCC 11-04-01 Food Service: Inspections and Sanitation
EKCC 11-04-02 Medical Screening of Food Handlers
EKCC 11-05-01 Food Service: Security
EKCC 11-06-01 Food Service. Kitchen and Dining Room Inmate Worker Responsibilities
EKCC 11-07-01 Dining Room Guidelines
EKCC 11-08-01 OJT Food Service Training Placement
EKCC 12-01-01 Vermin and Insect Control
EKCC 12-02-01 Inmate Dress and Use of Access Areas
EKCC 13-01-01 Pharmacy Policy (Amended 9/14/05)
EKCC 13-01-02 Self-Administration of Medication (SAM) Program (Amended 9/14/05)
EKCC 13-01-03 Injury Prevention (Amended 9/14/05) [Emergency-Medical Procedures]
EKCC 13-02-02 Sexual Assault (Amended 9/14/05)
EKCC 13-02-03 Consultations (Amended 9/14/05)
EKCC 13-02-04 Medical Services (Amended 9/14/05)
EKCC 13-02-05 Health Evaluations (Amended 9/14/05)
EKCC 13-02-06 Sick Call, General, and Dental (Amended 9/14/05)
EKCC 13-02-07 First Aid Kits (Amended 9/14/05)
EKCC 13-05-01 AIDS and Hepatitis B: Precautions Against Infection (Amended 9/14/05)
EKCC 13-07-01 Serious Illness, Major Injuries, Death (Amended 9/14/05)
EKCC 13-08-01 Psychiatric and Psychological Services (Amended 9/14/05)
EKCC 13-08-02 Psychiatric and Psychological Services Team (Amended 9/14/05)
EKCC 13-08-03 Suicide Prevention and Intervention Program (Amended 9/14/05)
EKCC 13-08-04 Detoxification (Amended 9/14/05)
EKCC 13-08-05 Mental Health Services (Amended 9/14/05)
EKCC 13-09-01 Dental Services (Amended 9/14/05) [for Special Management Units]
EKCC 13-10-01 Optometric Services (Amended 9/14/05)
EKCC 13-12-02 Resident Transfer/Medical Profiles (Amended 9/14/05)
EKCC 13-13-01 Syringes, Needles and Sharps Control (Amended 9/14/05)
EKCC 13-14-01 Fire and Emergency Evacuation Plan
EKCC 13-15-01 Medical Department - General Housekeeping Decontamination Procedures and Biocidal Waste Procedures (Amended 9/14/05) [Sanitation and Protection Standards and Requirements]
EKCC 13-16-01 Medical Records (Amended 9/14/05)
EKCC 14-02-01 Personal Hygiene Items: Issuance and Replacement Schedule
EKCC 14-04-01 Inmate Legal Services
EKCC 14-06-01 Inmate Grievance Procedure
EKCC 14-07-01 Inmate Rights and Responsibilities
EKCC 15-01-01 Hair and Grooming Standards: Inmate Barber Shop
EKCC 15-02-01 Restricted Wing
EKCC 15-05-01 Restoration of Forfeited Good Time
EKCC 15-06-01 Due Process/Disciplinary Procedure
EKCC 16-01-01 Inmate Visiting
EKCC 16-02-01 Inmate Correspondence
EKCC 16-03-01 Inmate Telephone Procedures
EKCC 16-05-01 Inmate Access to and Communication with EKCC Staff
EKCC 16-05-02 Unit Bulletin Boards
EKCC 17-01-01 Authorized Inmate Personal Property
EKCC 17-01-02 Personal Property Control
EKCC 17-02-01 Assessment/Orientation
EKCC 17-04-01 Inmate Reception Process at the EKCC
EKCC 18-01-01 Inmate Classification
EKCC 18-10-01 Preparole Progress Report
EKCC 18-13-01 Meritorious Housing
EKCC 18-13-02 Restricted Wing - Enhanced Supervision Unit
EKCC 18-13-03 Enhanced Supervision Unit
EKCC 18-13-04 Minimum Security Unit: Operating Procedures and Living Conditions (Amended 8/13/02)
EKCC 19-04-01 Inmate Work Program
EKCC 20-01-01 Educational Program
EKCC 21-01-01 Library Services
EKCC 22-02-01 Recreation and Inmate Activities
EKCC 23-01-01 Religious Services
EKCC 23-01-02 Muslim Services - Ramadan
EKCC 24-01-01 Social Services and Counseling Program
EKCC 24-02-01 Pathfinders (Amended 6/12/02)
EKCC 25-02-01 Inmate Discharge Procedure
EKCC 25-03-01 Prerelease Preparation
EKCC 25-04-01 Inmate Furloughs
EKCC 26-03-01 Confinement Review Program
EKCC 26-01-01 Citizens Involvement and Volunteers

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JOHN D. REES, Commissioner
APPROVED BY AGENCY: September 12, 2005
FILED WITH LRC: September 14, 2005 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 125 Holmes Street, Second Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Jason D. Hall, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-4001, ext. 338, fax (502) 564-5229.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trena C. Rogers
(1) Provide a brief summary of:
(e) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Eastern Kentucky Correctional Complex including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Eastern Kentucky Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides 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 Eastern Kentucky Correctional Complex into compliance with ACA Standards and updates current standards for the department and its facilities.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Eastern Kentucky Correctional Complex.

(d) How the amendment will assist in the effective administration of the statute: The amendment provides staff and inmates information concerning the effective and orderly management of the penal institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

(a) The type of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The Eastern Kentucky Correctional Complex.

(b) The number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: 383 employees, 1,674 inmates, and all visitors to the correctional institutions.

(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: Staff and inmates will have to follow the changes made in the policies and procedures.

(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: Eastern Kentucky Correctional Complex budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

(Amendment)


RELATES TO: KRS Chapters 196, 197, 439

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the 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 Green River Correctional Complex.

Section 1. Incorporation by Reference. (1) Green River Correctional Complex Policies and Procedures, September 14, 2005 [July 9, 2002], is incorporated by reference. Green River Correctional Complex Policies and Procedures include:

GRCC 01-01-01 Establishment of the GRCC Institutional Operations Manual (Amended 5/15/02)
GRCC 01-01-02 Organization of GRCC Operations Manual
GRCC 01-01-03 Formulation and Revision of GRCC Operating Procedures (Amended 5/19/02)
GRCC 01-02-01 Organization and assignment of Responsibility (Amended 5/15/02)
GRCC 01-03-01 Staff Meetings, Purpose and Requirements (Amended 5/15/02)
GRCC 01-04-01 Monthly Reports
GRCC 01-05-01 Procedures Officer
GRCC 01-06-01 Inmate Access to and Communication with GRCC Staff
GRCC 01-07-01 Institutional Tours of GRCC
GRCC 01-08-01 GRCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive and Community Agencies
GRCC 01-09-01 Duty Officer Responsibilities
GRCC 01-10-01 Smoking: GRCC Facility (Amended 7/9/02)
GRCC 01-11-01 Institutional Policies
GRCC 01-12-01 Public Information and Media Communication
GRCC 02-01-01 Fiscal Management Organization
GRCC 02-01-02 Fiscal Management Accounting Procedures
GRCC 02-01-03 Fiscal Management Agency Funds
GRCC 02-01-04 Fiscal Management Insurance
GRCC 02-02-01 Fiscal Management: Budget
GRCC 02-03-01 Fiscal Management: Audits
GRCC 02-04-01 Purchase and Supply Requisitions
GRCC 02-05-01 Warehouse Operation
GRCC 02-06-01 Inmate Canteen
GRCC 02-06-02 Inmate Canteen Committee
GRCC 02-07-01 Inmate Personal Funds
GRCC 02-08-01 Inventory Control
GRCC 03-01-01 General Guidelines for GRCC Employees (Amended 7/9/02)
GRCC 03-02-01 Personnel Designated for Mandatory Operations During Inclement Weather or Emergency Conditions (Amended 5/15/02)
GRCC 03-03-01 Employee Recognition Program
GRCC 03-04-01 Employee Grooming and EEO Complaint Procedure
GRCC 03-05-01 Drug Free Work Place
GRCC 03-06-01 Organization of Payroll and Personnel Records (Amended 5/15/02)
GRCC 03-07-01 Personnel Staffing Review (Amended 7/9/02)
GRCC 03-08-01 Personnel Registers (Amended 5/15/02)
GRCC 03-09-01 Selection and Promotion of Employees (Amended 7/9/02)
GRCC 03-10-01 Medical Examination for New Employees (Amended 5/15/02)
GRCC 03-11-01 Kentucky Employee Assistance Program
GRCC 03-12-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers
GRCC 03-13-01 Employee Evaluations (Amended 7/9/02)
GRCC 03-14-01 Student Placement Program
GRCC 03-15-01 Documentation Requirement Guidelines (Amended 5/15/02)
GRCC 03-16-01 New Employee Orientation (Amended 5/15/02)
GRCC 03-17-01 Resignation, Transfer or Termination Clearance Procedure
GRCC 04-01-01 Employee Training and Staff Development
GRCC 05-01-01 Information System
GRCC 05-02-01 Outside Consultation and Research
GRCC 06-01-01 Offender Records
GRCC 06-02-01 Storage of Expunged Records
GRCC 07-01-01 Maintenance Requests
GRCC 07-02-01 Preventive Maintenance Program (Amended 5/15/02)
GRCC 07-03-01 Mechanical Equipment Repair and Control of Hazardous Energy (Amended 5/15/02)
GRCC 08-01-01 Occupational Exposure to Serious and Infectious Diseases (Amended 5/15/02)
GRCC 08-02-01 Fire Safety (Amended 5/15/02)
GRCC 08-04-01 Control of Caustic, Toxic, Flammable, Hazardous and Other Materials
GRCC 08-04-02 Hazardous Chemicals and Material Safety Data Sheet
GRCC 09-01-01 Inmate Costs (Amended 7/9/02)
GRCC 09-02-01 Drug Abuse Testing (Amended 7/9/02)
GRCC 09-03-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power (Added 5/15/02)
GRCC 09-04-01 Inmate Death (Added 7/9/02)
GRCC 09-13-01 Establishment of Security Posts at GRCC (Amended 5/15/02)
GRCC 09-14-01 Vehicle Usage (State and Private) (Amended 5/15/02)
GRCC 10-01-01 Special Management Unit (Amended 7/9/02)
GRCC 11-01-01 Food Service: Guidelines (Amended 5/15/02)
GRCC 11-02-01 Food Service: Security (Amended 5/15/02)
GRCC 11-03-01 Dining Room Guidelines (Amended 7/9/02)
GRCC 11-04-01 Food Service: Meals (Amended 5/15/02)
GRCC 11-04-02 Food Service: Menu, Nutrition and Restricted Diets (Amended 5/15/02)
GRCC 11-06-01 Health Requirements of Food Handlers (Amended 5/15/02)
GRCC 11-07-01 Food Service: Inspections and Sanitation (Amended 5/15/02)
GRCC 11-08-01 Food Service: Purchasing, Storage and Farm Products (Added 5/15/02)
GRCC 12-01-01 Cleaning, Baking, Kitchen Supplies and Barber Shop (Amended 5/15/02)
GRCC 12-02-01 Sanitation Inspections
GRCC 12-03-01 Harmin and Insect Control
GRCC 13-01-01 Organization of Medical Services (Amended 9/14/2005 [6/14/02])
GRCC 13-02-01 Medical Services: Sick Call, Physician's Clinics and Pill Call (Amended 9/14/2005 [6/14/02])
GRCC 13-02-02 Medical Services: Copayment (Amended 9/14/2005 [6/14/02])
GRCC 13-02-03 Continuation of Care: Health Evaluations, Intrasystem Transfer, Individual Treatment Plan (Amended 9/14/2005 [6/14/02])
GRCC 13-03-01 Use of Pharmaceutical Products (Amended 9/14/2005 [6/14/02])
GRCC 13-04-01 Health Records (Amended 9/14/2005 [6/14/02])
GRCC 13-04-02 Psychological and Psychiatric Reports (Amended 9/14/2005 [6/14/02])
GRCC 13-05-01 Management of Serious and Infectious Diseases (Amended 9/14/2005 [6/14/02])
GRCC 13-06-01 Mental Health Services (Amended 9/14/2005 [6/14/02])
GRCC 13-07-01 Medical Restraints (Amended 9/14/2005 [6/14/02])
GRCC 13-08-01 Eye Care (Amended 9/14/2005 [6/14/02])
GRCC 13-09-01 Dental Care (Amended 9/14/2005 [6/14/02])
GRCC 13-10-01 Transfers and Medical Profiles (Amended 9/14/2005 [6/14/02])
GRCC 13-11-01 Informed Consent (Amended 9/14/2005 [6/14/02])
GRCC 13-12-01 Inmate Care (Amended 9/14/2005 [6/14/02])
GRCC 13-13-01 Inmate Self-administration of Medication (Amended 9/14/2005 [6/14/02])
GRCC 13-15-01 Health Education Program and Detoxification (Amended 9/14/2005)
GRCC 14-01-01 Inmate Rights and Responsibilities (Amended 5/15/02)
GRCC 14-02-01 Legal Services Program
GRCC 16-01-01 Inmate Visiting (Amended 5/15/02)
GRCC 16-02-02 Inmate Correspondence and Privileged Mail (Amended 7/9/02)
GRCC 16-03-01 Inmate Telephone Communications (Amended 5/15/02)
GRCC 16-04-01 Inmate Packages (Amended 7/9/02)
GRCC 17-01-01 GRCC Inmate Property Control (Amended 7/9/02)
GRCC 17-02-01 GRCC Inmate Receiving and Orientation Process (Amended 7/9/02)
GRCC 17-03-01 Procedure for Sending Televisions to Outside Dealer for Repair (Amended 7/9/02)
GRCC 18-01-01 Inmate Classification (Amended 5/15/02)
GRCC 18-02-01 Mentorious Housing (Amended 7/9/02)
GRCC 18-02-02 Mentorious Visitation Program (Amended 5/15/02)
GRCC 19-01-01 Inmate Work Program (Amended 5/15/02)
GRCC 19-01-02 Unassigned Status (Amended 7/9/02)
GRCC 20-01-01 Educational Programs (Amended 5/15/02)
GRCC 21-01-01 Library Services
GRCC 22-01-01 Recreation Programs (Amended 7/9/02)
GRCC 22-02-01 Inmate Clubs and Organizations (Amended 7/9/02)
GRCC 22-03-01 Employee Use of Recreation Facilities
GRCC 22-04-01 Arts and Crafts Projects (Amended 5/15/02)
GRCC 22-05-01 Inmate Photo Project (Amended 7/9/02)
GRCC 23-01-01 Religious Programs (Amended 5/15/02)
GRCC 23-02-01 Death or Hospitalization of an Inmate's Family Member and Notification of Inmates (Amended 5/15/02)
GRCC 24-01-01 Social Services and Counseling Program (Amended 7/9/02)
GRCC 25-01-01 Pre-Release Program (Amended 5/15/02)
GRCC 25-01-02 Inmate Release Program (Amended 5/15/02)
GRCC 25-02-01 Parole Hearing Procedure (Amended 7/9/02)
GRCC 26-01-01 Citizen Involvement and Volunteer Services Program (Added 5/15/02)

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

JOHN D. REES, Commissioner
APPROVED BY AGENCY: September 12, 2005
FILED WITH LRC: September 14, 2005 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 125 Holmes Street, Second Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 5 workdays prior to the hearing of their Intent to attend. If no notification of Intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of Intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jason Hall, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second
VOLUME 32, NUMBER 4 – October 1, 2005

TRANSPORTATION CABINET
Department of Highways
(Amendment)

603 KAR 5:050. Uniform traffic control devices.

RELATES TO: KRS 189.337
STATUTORY AUTHORITY: KRS 189.337(2), 23 C.F.R. Part 655 Subpart F
NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.337(2) requires the Transportation Cabinet, Department of Highways, to adopt a uniform system of traffic control devices. The Federal Highway Administration through its regulation 23 C.F.R. Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the "Manual on Uniform Traffic Control Devices". This administrative regulation defines the system by incorporating by reference the "Manual on Uniform Traffic Control Devices" and the amendments adopted to the manual.

Section 1. Traffic Control Devices on All Public Highways. The standards and specifications set forth in the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways" shall apply to all traffic control devices, including signs and roadway markings, installed on any publicly used highway, road, street, avenue, alley, boulevard, bridge, viaduct, or truss, and the approaches to them, and off-street parking facilities in Kentucky.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, Division of Traffic Operations, 200 Mero Street, Third Floor, [601 High Street, First Floor] in Frankfort, Kentucky, Monday through Friday, 8 a.m. until 4:30 p.m.

MARC D. WILLIAMS, P.E., Commissioner
BILL NIGHBERT, Acting Secretary
APPROVED BY AGENCY: September 13, 2005
FILED WITH LRC: September 14, 2005 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on these proposed regulations shall be held on October 25, 2005, at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Office Building, Conference Room 612, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing 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 workdays 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 not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Dana Fugazzali, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-20-01, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.
VOLUME 32, NUMBER 4 – October 1, 2005

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana Fugazzi

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation adopts the uniform system of traffic control devices required by the Federal Highway Administration.
(b) The necessity of this administrative regulation: Pursuant to KRS 189.337 and federal law, the cabinet is required to adopt these standards.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation adopts a manual of standards and specifications for a uniform system of official traffic control devices for use upon all roads and streets as required by KRS 189.337.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation gives notice of what the standards are and provides a means for the public to get access to those standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the state regulation by adopting the current edition of the Manual on Uniform Traffic Control Devices.
(b) The necessity of the amendment to this administrative regulation: It is necessary to adopt the current edition of the Manual on Uniform Traffic Control Devices to remain compliant with federal law.
(c) How the amendment conforms to the content of the authorizing statutes: It adopts the current edition of the Manual on Uniform Traffic Control Devices as required by the Federal Highway Administration.
(d) How the amendment will assist in the effective administration of the statutes: This will allow the cabinet to apply and enforce current provisions of the Manual on Uniform Traffic Control Devices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all government agencies responsible for maintaining traffic control devices.

(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: All agencies who work with traffic control devices must conform to the current standard set forth in the Manual on Uniform Traffic Control Devices and all future revisions and supplements to the manual.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None known.
(b) On a continuing basis: None known.
(c) 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: The cabinet has not increased fees and does not anticipate a need for increased fees.

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

(9) TIERING: Is tiering applied? Yes, tiering was applied. The signage requirement varies based on the type of right of way and the amount of usage.

FINANCIAL AND ADMINISTRATION CABINET
School Facilities Construction Commission (Amendment)

750 KAR 1:010. Commission procedures.

RELATES TO: KRS Chapter 157
STATUTORY AUTHORITY: KRS 157.617, 157.622
NECESSITY, FUNCTION, AND CONFORMITY: The School Facilities Construction Commission (SFCC) was established for the purpose of assisting local school districts to meet the school construction needs of the state. The General Assembly has appropriated funds for administrative support and debt service to allow the SFCC to implement its program. KRS 157.617 authorizes the SFCC to promulgate administrative regulations for the orderly conduct of its affairs. This administrative regulation describes the procedures the SFCC utilizes [School Facilities Construction Commission will utilize] in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining the allowable expenditure of funds, cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project, and allocating savings from refinancings.

Section 1. Definitions. (1) "Level repayment schedule" means a repayment schedule in which the combined annual amount of principal and interest payments for each issuance of bonds remains relatively constant over the life of the issue.
(2) "Maximum annual repayment amount" means the maximum aggregate total of SFCC annual payments for all bonds issued for a particular school district in which the SFCC has participated. If a bond series has been refunded, the original issue and debt schedule shall be the one used in making this computation.
(3) "Offer of assistance" means the amount available for a school district from a current biennium along with any allocation administrative regulation regulates. The placement of traffic signs and pavement marking on public highways and streets. Traffic control methods in highway work zones.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0
Expenditures (+/-): 0

Other Explanation: The local government agencies will be able to implement these changes to the Manual as part of their regular road and street maintenance budgets.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 C.F.R. Part 655 Subpart F.
2. State compliance standards. Kentucky has adopted and been guided by the mandated Manual on Uniform Traffic Control Devices for many years.
3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:
(a) The listing of the type of signs and their placement required on each highway type; and
(b) Establishes the type and placement of pavement markings required on each highway type.
(c) Traffic controls to be used in construction, maintenance or utility work zones.

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. Not applicable.
services, and equipment.
(a) The site acquisition cost shall be limited to the lesser of:
1. The actual cost of acquiring a site; or
2. The fair market value of the site as determined by qualified appraisal obtained by the SFCC [School Facilities Construction Commission] and charged to the project account.
(b) Construction costs shall not include the cost of supplies as defined by the "Financial Accounting for Local and State School Systems" Instruction Manual.
(c) SFCC [School Facilities Construction Commission] funds or funds from the restricted account shall not be used to:
(a) Purchase a site greater than that required by state board administrative regulations for construction of the approved project; or
(b) Reimburse the local board of education for a site acquired before enactment of KRS 157.611. [Construction costs may include the cost of fixed equipment and movable equipment, but may not include the cost of supplies as defined by "Kentucky School Financial Accounting System" Instruction Manual.]

Section 8. Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the SFCC [School Facilities Construction Commission] shall determine whether the local school district will issue the bonds or the SFCC will issue the bonds. Local school districts may request authority from the SFCC to issue the bonds through a city, county, or other agency and Instrumentality of the Board of Education. (2) If the SFCC [School Facilities Construction Commission] grants permission to issue bonds at the local level, the procedures for issuing the bonds shall be as follows:
(a) The local board of education shall obtain the services of a financial advisor;
(b) The contract with the financial advisor shall be submitted to the SFCC [School Facilities Construction Commission] for final approval and signature by the local school district and the financial advisor;
(c) The local board of education shall obtain the services of a trustee, paying agent, and registrar. Such institution shall meet eligibility criteria provided by the SFCC [School Facilities Construction Commission].
(3) If [in situations where] the size of the bond issues is [small] (less than $1,000,000) [600,000] or there is no local participation in the repayment, the SFCC [School Facilities Construction Commission] may determine that it is in the best interests of the SFCC [School Facilities Construction Commission] and the local school board for the SFCC [School Facilities Construction Commission] to manage the bond sale procedures. If the SFCC determines that it is in the best interest of the SFCC and the local school board for the SFCC [School Facilities Construction Commission] to manage the bond sale procedures [in a case where the determination is made], the following shall apply:
(a) The bonds shall [will] be sold in the name of the SFCC [School Facilities Construction Commission];
(b) The SFCC [School Facilities Construction Commission] shall obtain the services of a financial advisor;
(c) The SFCC may combine [At the discretion of the School Facilities Construction Commission] multiple projects [may be combined] into single bond issues. [These will generally be limited to small projects and projects where the respective construction bid dates are contemporaneous];
(d) The SFCC [School Facilities Construction Commission] shall obtain the services of a trustee, paying agent, and registrar, who [Such institution] shall meet the eligibility criteria provided by the SFCC [School Facilities Construction Commission].
(4) The following procedures shall be followed by all participating districts in construction of SFCC debt service schedules:
(a) The SFCCs [School Facilities Construction Commission] portion of the bond sale shall be limited to a twenty (20) year issue, with level repayment schedule. The maximum annual repayment amount shall not exceed the offer of assistance from the SFCC [School Facilities Construction Commission];
1. The debt service schedule shall [always] have twenty (20) years of payments based on six (6) month intervals or forty (40)
payments. If the payments begin so that only one (1) payment is made in the first fiscal year of the schedule, payments may extend over twenty-one (21) fiscal years; except [however, in such cases] the amounts of the first and last payments combined shall not exceed the amount of one (1) annual payment.

2. Annual payments shall be based on a fiscal year. The fiscal year of the SFCC shall begin [be the same as used by state government] on July 1 and ending the following June 30. All schedules shall be prepared in such a way that annual amounts based on a fiscal year are presented in a clear, easy-to-read format while each interest and principal payment is both segregated and totaled by payment period.

(b) The local school district's portion of the bond sale shall be structured to meet the unique financial needs of the district. Debt service on the bonds issued shall include the minimum amount required for eligibility to participate in the program as certified by the State Board of Education. The minimum term of the local bond issue to meet eligibility criteria shall be twenty (20) years. At the discretion of the local board of education, the bond issue may include a local contribution to debt service in excess of the minimum required, and the length of the local portion of the repayment schedule may exceed twenty (20) years.

(c) Interest is calculated and accrued on funds derived from the bond sale shall be allocated to the debt service schedules of the school district and the SFCC [School Facilities Construction Commission] in the same proportions as its respective participation in the bond issue.

1. For allocation purposes, each month is calculated as thirty (30) days.

2. The accrued interest allocated to the SFCC is calculated by multiplying the number of days times the "daily interest" as defined in Section 1 of the administrative regulation.

3. The number of days is calculated from the issue date of the bonds to the day the bonds are delivered, excluding the day of settlement.

For a typical six (6) month coupon, the number of days would be 180. For a longer coupon (i.e., seven (7) month) the divisor would be 210 days.

6.) If local payments are involved in the bond issue, [the same method shall be used to allocate] the accrued interest available to the local district shall be calculated as set out in Section 8(4)(c) of this administrative regulation.

(d) The proceeds of the bond sale shall be continually invested until expended on the project or until the project is completed. Any remaining proceeds or investment income received after completion of the project shall be applied to the debt service. Credit against the district's and the SFCC's [commission's] debt service schedule shall be applied in the same percentage as the participation in the bond issue or, if permitted by the bond resolution or indenture, excess funds may be applied to an approved project next in order priority.

(e) A certificate of project completion shall be filed with the SFCC [School Facilities Construction Commission] by the local school district. The certificate shall summarize the application of the bond proceeds, Investment earnings, and any remaining funds from either source. The certificate shall also verify the use of cash contribution as may be required for eligibility by the local school district.

(f) Fees paid to a financial advisor shall be in accordance with the following fee schedule. Fees exceeding this schedule shall be paid by the local board of education.

Maximum Fee Schedule
Services and Expenses of Fiscal Agent
$7,500 shall be permitted as a minimum fee on any amount of bonds issued; otherwise, $11 per $1,000 on the first $1 million, $10 per $1,000 on the second million, and $4 per $1,000 on all over $2 million.

Fee is based upon the amount of bonds actually issued.

Fee to include attorney fees, printing of bonds and official statements, advertising the bond issue, travel of the fiscal agent, and other normal expenses related to the bond closing.

Fee not to include title search or rating service.

Section 9. Cumulative Credit. Any eligible district which fails in any budget period to receive an allocation of state funds sufficient to fund the first priority project on the approved facilities plan of the district may request the approval of the SFCC [School Facilities Construction Commission] to accumulate credit subject to the availability of funds, for its unused state allocation for a period not to exceed four (4) years. Districts which receive funds in excess of those required to complete the first project may apply those funds to the next priority project on their approved facilities plan. If in the event there are insufficient funds to complete the next project, those funds may accumulate as previously outlined. All fund credit accumulated in this manner shall be forfeited at any time that the local district fails to accept an offer of assistance tendered to the district [meet the eligibility criteria].

Section 10. Refinancing Savings. Savings that occur as a result of a refinancing in which the SFCC [School Facilities Commission] or a participant shall be divided as follows and in the following order of priority:

1. If [Where the SFCC's [commission's] amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service can be maintained on behalf of the SFCC [commission],] it shall be maintained at the same annual amount; therefore, lowering the local district's amount for annual debt service payments by the amount of the total savings on the refinancing. Consequently, the bonding capacity of the local district shall be increased allowing the district to pursue its next facility priority. Any accrued interest shall be deemed a part of the total savings.

2. If [On refinancings which already have incurred debt service payments, the amount of annual savings that accrued to the commission shall be distributed among the participants of the last payment(s) of the commission's share of the debt service, thereby insuring that the total savings over the life of the bond issue accrues to the account of the local district.

3. Where the SFCC's [commission's] amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service paid on behalf of the SFCC [commission] is greater than the annual debt service of the refinanced bond issue debt, annual savings generated shall be added to that school district's cumulative credit with the SFCC. These credits shall have no expiration time period for their use.

DR. ROBERT TARVIN, Executive Director
APPROVED BY AGENCY: August 25, 2005
FILED WITH LRC: August 25, 2005: 3:45 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on October 26, 2005, at 11 a.m. In Suite 102, 229 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this 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 October 21, 2005, 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 October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Robert Tarvin, Executive Director, School Facilities Construction Commission, 229 W. Main Street, Suite 102, Frankfort, Kentucky 40601, phone (502) 564-5562, fax (502) 564-5412.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robert E. Tervin

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation describes the procedures the School Facilities Construction Commission (SFCC) utilizes in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, cumulating credit for those districts that maintain their eligibility, and allocating savings from refinancings.
(b) The necessity of this administrative regulation: KRS 157.617 and 157.622 provide that the SFCC shall provide administrative regulations for the manner in which it carries out its statutory authority.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth provisions for determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, cumulating credit for those districts that maintain their eligibility, and allocating savings from refinancings.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the basis on which the SFCC administers the funds provided by the legislature for the purpose of assisting local school districts to meet the school construction needs of the state in an equitable manner.
(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 title of the "Kentucky School Financial Accounting System" Instruction Manual to the "Financial Accounting for Local and State School Systems" Instruction Manual, and causes accumulated credits to be forfeited if a district fails to accept an offer of assistance tendered to the district. It also deletes Section 10(2), because it is no longer necessary to conform to the statute.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because the "Kentucky School Financial Accounting System" manual no longer exists. Moreover, under the current regulations a district would be forfeited accumulated credits if they were deemed not to have met eligibility criteria for which they had no control according to Section 9. The amendment will cause the district to forfeit its credits based on a new set of criteria, namely those of the authorizing statutes. The amendment modifies the rules for the accumulation of credits called for in KRS 157.622.
(c) How the amendment will assist in the effective administration of the statutes: The amendment assists in administrating the distribution of resources in an equitable manner for all local school districts.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 376 local school districts within the state that are governed by this regulation.
(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: The name change on the accounting manual will have no effect. The definition of loss of credits should impact any district favorably, which meets the new criteria, by allowing the district to continue to participate in the program.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional 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: No additional funding is necessary for implementation of this regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No additional funding is necessary for implementation of this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.
(9) TIERING: Is tiering applied? No, the same criteria apply to all school districts.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor 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 Chapter 338
STATUTORY AUTHORITY: KRS 338 051(3), 338.061, 29 C.F.R. 1926 500-503
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes [requires] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. [KRS 338.051(3)] authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the construction industry.

Section 1. Definitions. (1) *C.F.R.* means Code of Federal Regulations
(2) "Faya" means the horizontal lower edge of a roof.
(3) "Employee" is defined in KRS 338 015(2).
(4) "Employer" is defined in KRS 338 015(1).
(5) "Fall restraint system" means a system used to prevent an employee from falling any distance consisting of an anchorage, connectors, and body belt or harness. It may include, but not be limited to, lifelines and rope grabs designed for that purpose.
(6) "Fakke edge" means the roof edge at the gable end of a structure.
(7) "Residential construction" means construction work on a stand alone single family dwelling, duplex, triplex or fourplex structure.
(8) "Slid guard system" means a system designed to prevent employees from sliding off a sloped roof to a lower level consisting of metal brackets used in conjunction with dimensional lumber or a site built system of similar design and dimension. A slide guard system is a piece of equipment.
(9) "Slopa" means the roof vertical rise in inches for every horizontal twelve (12) inch length. The horizontal twelve (12) inch length referred to as the run. The slope, also referred to as pitch, is expressed with the rise (vertical) mentioned first and the run (horizontal) mentioned second, such as 4 in 12 or 4/12 and written as 4/12 or 4 1/12.
(10) "Standard" is defined in KRS 338 015(3).
(11) "Three (3) points of contact" means one (1) hand and both feet or one (1) foot and both hands.
(12) "Visible defect" means saw cuts, oars, twists, holes, splits, breaks, or gouges.

Section 2. (1) 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, except as modified by the definitions in Sections 1 and 3 of this administrative regulation:
(a) 29 C.F.R. 1926.500 through 29 C.F.R. 1926.501(b)(12), revised July 1, 2005; and
(b) 29 C.F.R. 1926.501(b)(14) through 29 C.F.R. 1926.503, revised July 1, 2005.
(2) An employer may utilize Appendices A, B, C, D, and E to Subpart M of 29 C.F.R. 1926, revised July 1, 2005, except the Sample Fall Protection Plan for Residential Construction found in Appendix E.

(3) A non-mandatory Sample Fall Protection Plan for Residential Construction is incorporated by reference in Section 4 of this administrative regulation.

Section 3. Residential Construction (1) The language in this section shall apply in lieu of 29 C.F.R. 1926.501(b)(1), (b)(2), (b)(3), (b)(6), and (b)(13). All other provisions of 29 C.F.R. 1926.501, 1926.502, and 1926.503 shall apply for residential construction unless specifically addressed in this section.

(2) General.
(a) Each employer engaged in residential construction activities 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 subsections (3), (4), (5), or (6) of this section. These measures may be routinely used in accordance with the criteria established in subsections (3), (4), (5), or (6) of this section and an employer need not demonstrate that it is feasible or creates a greater hazard to use guardrail systems, safety net systems, or personal fall arrest systems before using a measure provided in subsections (3), (4), (5), or (6) of this section.

(b) When the employer can demonstrate that it is feasible or creates a greater hazard to use guardrail systems, safety net systems, personal fall arrest systems, or a measure found in subsections (3), (4), (5), or (6) of this section, the employer shall develop and implement a written fall protection plan which meets the requirements of 29 C.F.R. 1926.503(k). There is a presumption that it is feasible and will not create a greater hazard to Implement at least one (1) of the fall protection systems listed in this paragraph or a measure provided in subsections (3), (4), (5), or (6) of this section. Accordingly, the employer has the burden of establishing that it is appropriate to implement a written fall protection plan which complies with 29 C.F.R. 1926.502(b) for a particular workplace situation in lieu of implementing guardrail systems, safety net systems, personal fall arrest systems, or a measure provided in subsections (3), (4), (5), or (6) of this section.

(3) Floor systems.
(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 a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems, or may implement the measures established in paragraphs (c) and (d) below through (h) of this subsection when the floor lofts or trusses are eighteen (18) inches or less.
(c) The first loft or truss shall be placed into position and secured by workers on the ground, from ladders, or from a scaffolding system.

(d) Successive lofts or trusses shall be placed into position and secured by workers on the ground, from ladders, or from a scaffolding system.

(e) The temporary platform shall be at least eighteen (18) inches wide and secured. However only the employee(s) performing the work shall work from the platform and shall remain on the platform.

(f) The first row of floor sheathing shall be placed into position, installed, and secured from the ground, from ladders, or from scaffolding system, or from a secured temporary platform at least eighteen (18) inches wide and secured. However only the employee(s) performing the work shall work from the platform and shall remain on the platform.

(g) 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.

(h) After two (2) rows of sheathing have been installed, only the employee(s) performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

(i) All other employees shall remain at least four (4) feet away from the leading edge.

(4) Roof system.
(a) Employees engaged in residential construction roof truss or rafter 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 a combination of warning line system and guardrail system. Warning line system and safety net system, warning line system and personal fall restraint systems, or warning line system and personal fall restraint system.

(b) After two (2) rows of sheathing have been installed, only the employee(s) performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

(c) The first row of floor sheathing shall be placed into position, installed, and secured from the ground, from ladders, or from scaffolding system, or from a secured temporary platform at least eighteen (18) inches wide and secured. However only the employee(s) performing the work shall work from the platform and shall remain on the platform.

(d) Slide guard systems.
(a) Employers and employees installing residential construction roof sheathing with a ground to eave height above twenty-five (25) feet or engaged in residential construction roof work with a ground to eave height above 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(b)(1) through (b)(4).

(b) Slide guard 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 with a ground to eave height above twenty-five (25) feet or engaged in residential construction roof work with a ground to eave height above twenty-five (25) feet shall install the slide guard system immediately after the first row of sheathing is installed.
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(d) Slide guard systems shall comply with the following provisions:

1. All slide guard systems shall be installed, utilized, and removed under the supervision of a competent person.

2. All slide guard systems shall be used in accordance with the manufacturer's specifications, limitations, and recommendations.

3. All slide guard systems shall be maintained in accordance with the manufacturer's specifications and recommendations.

4. The manufacturer's specifications shall be available at the job site for review if the slide guard system is not utilized and maintained in accordance with this subsection.

5. All slide guard systems 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 all slide guard systems, any and all damaged or weakened components shall be immediately replaced or repaired.

7. For all slide guard systems, if replacement or repair of a damaged or weakened component is not feasible, work shall be suspended until the damaged or weakened component is replaced, repaired, or another form of fall protection shall be 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 no more than two (2) or better construction grade lumber;
   b. Have a minimum dimension of two (2) inches nominal by six (6) inches nominal;
   c. All lumber shall be free from cracks or other visible defects;
   d. Any other type of material used for this purpose shall meet the same dimensions and be equivalent in strength and have 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 or working surface as the employee being protected.

12. A continuous slide guard system below the walking or working area shall be installed along the edge no closer than three (3) inches from the edge and remain in place until the work is completed.

13. Additional continuous slide guard systems shall be installed 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.

15. Manufactured roof brackets, or jack, shall:
   a. Be a minimum of six (6) inch brackets;
   b. Be secured according to the manufacturer's specifications, limitations, and recommendations;
   c. Be 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. Be spaced greater than eight (8) feet apart horizontally or according to the manufacturer's specifications, whichever is less.

16. The manufacturer's specifications shall be available at the job site for review if the manufactured roof brackets, or jack, are not utilized in accordance with the provisions established above in this subparagraph.

17. Nonmanufactured, job, or site made slide guard systems shall comply with the following provisions:
   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. No more than one (1) person shall occupy any given eight (8) feet of a job made slide guard system.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Labor, 1047 US Highway 177 South, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be inspected, copied, or obtained at www.labkov.net. [Incorporation by Reference—(1). The following material is incorporated by reference—

(a) 29 CFR Part 1926 600 through 29 CFR Part 1926 603 and Appendix, published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, revised as of July 1, 2000; and

(b) The revisions to 29 CFR 1926 600-606, "Scope, Application, and Definitions Applicable to this Subpart", as published in the Federal Register, Volume 65, Number 12, January 18, 2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, Division of Education and Training, 127 South, Suite 4, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: September 14, 2005

FILED WITH LRC: September 15, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2005 at 11 a.m. ET at the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 but wish to submit written comments on the proposed administrative regulation, Written comments shall be accepted until October 31, 2005. 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: Chuck Stribling, Safety Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chuck Stribling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not presently found in the regulation or federal standard. Section 2 incorporates by reference a "Non-Mandatory Sample Fall Protection Plan for Residential Construction." Section 3 of this administrative regulation changes the fall protection trigger height in residential construction and provides residential construction employers the opportunity to utilize additional fall protection alternatives if they choose to. Employers engaged in residential construction activities who wish to comply with the options in this amendment will be able to expand their operations to include fall protection alternatives currently not found in the regulations. By providing regulatory flexibility to these employers, this amendment may reduce their costs and increase productive time. This amendment may reduce employers' compliance burden by modifying the general 6 foot fall protection requirement in residential construction to 10 feet and providing additional fall protection alternatives. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation updates the Code of Federal Regulations to July 1, 2005.

(b) The necessity of the amendment to this administrative regulation: Kentucky's OSHA Program is mandated by 29 C.F.R. Part 1953 to be at least as effective as federal OSHA. Having already adopted OSHA's fall protection standards, the Kentucky OSHA Program was unable to recognize the written federal enforcement policy that differs from the requirements of the regulation. KRS 13A.130 prohibits the Kentucky OSHA Program from taking such action. This regulation is modeled on Oregon rules that have been attributed to significantly reducing residential construction injuries and workers' claims rates. The Kentucky OSHA Program, after working closely with the regulated community, petitioned the Commissioner of Labor, who serves as the Chair of the OSH Standards Board, to modify 803 KAR 2:412. Although the Kentucky OSHA Standards Board was neither mandatorily nor obligated to adopt this amendment, the board approved it to provide employers and employees with additional compliance options.

(c) How the amendment 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 the amendment will assist in the effective administration of the statutes: By providing additional compliance options, this amendment may reduce their costs and increase productive time. This amendment may reduce employers' compliance burden by modifying the general 6 foot fall protection requirement in residential construction to 10 feet and providing additional fall protection alternatives. This amendment does not impose additional compliance requirements upon residential construction employers. Employers affected by this amendment are currently covered by the fall protection standards. This amendment will reduce the administrative burden in residential construction and provides employers the opportunity to utilize additional fall protection alternatives if they choose 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 defines terms presently not found in the regulation or federal standard, incorporates by reference a "Non-Mandatory Sample Fall Protection Plan for Residential Construction," changes the fall protection trigger height in residential construction from 6 feet to 10 feet, and provides additional compliance options for employers engaged in residential construction activities. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation updates the Code of Federal Regulations to July 1, 2005.

(b) The necessity of the amendment to this administrative regulation: Kentucky's OSHA Program is mandated by 29 C.F.R. Part 1953 to be at least as effective as federal OSHA. Having already adopted OSHA's fall protection standards, the Kentucky OSHA Program was unable to recognize the federal enforcement policy. Written federal enforcement policy differs from the requirements of the regulation. KRS 13A.130 prohibits the Kentucky OSHA Program from taking such action. This regulation is modeled on Oregon rules that have been attributed to significantly reducing residential construction injuries and workers' claims rates. The Kentucky OSHA Program, after working closely with the regulated community, petitioned the Commissioner of Labor, who serves as the Chair of the OSH Standards Board, to modify 803 KAR 2:412. Although the Kentucky OSHA Standards Board was neither mandatorily nor obligated to adopt this amendment, the board approved it to provide employers and employees with additional compliance options.

(c) How the amendment 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 the amendment will assist in the effective administration of the statutes: By providing additional compliance options, this amendment may enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection may result from promulgation of this amendment because employers and employees in residential construction will be able to utilize additional fall protection alternatives and are more likely to comply with the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects all private and public sector employers in the commonwealth engaged in residential construction industry activities covered by KRS Chapter 338.

(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: Improved employee protection may result from promulgation of this amendment, because employers engaged in residential construction activities who wish to comply with the options in this amendment will be able to expand their operations to include fall protection alternatives currently not found in the regulation. By providing regulatory flexibility to these employers, this amendment may reduce their costs and increase productive time. This amendment may reduce employers' compliance burden by modifying the general 6 foot fall protection requirement in residential construction to 10 feet and providing additional fall protection alternatives. This amendment does not impose additional compliance requirements upon residential construction employers. Employers affected by this amendment are currently covered by the fall protection standards. This amendment will reduce the administrative burden in residential construction and provides employers the opportunity to utilize additional fall protection alternatives if they choose to.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no additional 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 a proposed 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. Kentucky's Occupational Safety and Health Program regulations affect all employers with 1 or more employees. All employers covered by KRS Chapter 335 are treated equally. Inspections are conducted at facilities that pose high risk to workers' safety and health at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

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. 1952.11.

2. State compliance standards. This amendment defines terms presently not found in the regulation or federal standard, incorporates by reference a "Non-Mandatory Sample Fall Protection Plan for Residential Construction," changes the fall protection trigger height in residential construction from 6 feet to 10 feet for construct 39 C.F.R. 1926.501(b)(12), revised July 1, 2005, and 29 C.F.R. 1926.501(b)(14) through 29 C.F.R. 1926.503, revised July 1, 2005. Additionally, this amendment defines terms not presently found in the regulation or federal standard, incorporates by reference a "Non-Mandatory Sample Fall Protection Plan for Residential Construction," changes the fall protection trigger height in residential construction from 6 feet to 10 feet, provides additional compliance options for employees engaged in residential construction activities, updates the regulation to meet KRS Chapter 13A considerations, and updates the Code of Federal Regulations to July 1, 2005.

3. Minimum or uniform standards contained in the federal mandate. This amendment, in Section 2, establishes that the construction industry shall be held to 29 C.F.R. 1926.501 through 29 C.F.R. 1926.501(b)(12), revised July 1, 2005, and 29 C.F.R. 1926.501(b)(14) through 29 C.F.R. 1926.503, revised July 1, 2005. Additionally, this amendment defines terms not presently found in the regulation or federal standard, incorporates by reference a "Non-Mandatory Sample Fall Protection Plan for Residential Construction," changes the fall protection trigger height in residential construction from 6 feet to 10 feet, provides additional compliance options for employers engaged in residential construction activities, updates the regulation to meet KRS Chapter 13A considerations, and updates the Code of Federal Regulations to July 1, 2005.

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 not impose stricter or additional requirements or responsibilities than those required by the federal standards. This amendment differs from the federal standard by defining terms in Section 1 which are currently not found in the federal standard. Section 2 incorporates by reference a "Non-Mandatory Sample Fall Protection Plan for Residential Construction." Section 3 provides changes to the fall protection trigger height in residential construction and provides employers the opportunity to utilize additional fall protection alternatives if they choose to.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose stricter or additional requirements or responsibilities than those required by the federal standards. Employers engaged in residential construction activities who wish to comply with the options in this amendment will be able to expand their operations to include fall protection alternatives currently not found in the regulation. By providing regulatory flexibility to these employers, this amendment may reduce their costs and increase productive time. This amendment may reduce employers' compliance burden by modifying the general 6 foot fall protection requirement in residential construction to 10 feet and providing additional fall protection alternatives. Improved employee protection may result from promulgation of this amendment, because employers and employees in residential construction will be able to utilize additional fall protection alternatives and are more likely to comply with the requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This amendment affects any unit, part, or division of local government employees engaged in residential construction work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandate the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation affects the safety and health of all local government employees engaged in residential construction work. Consequently, this administrative regulation may relate to any aspect or service of local government. KRS 338.001, 338.021, 338.051, 338.061, 603 KAR 2.100, 2.050, Public Law 91-596, the Occupational Safety and Health Act of 1970 - Section 18, and 29 C.F.R. 1952.11 authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government 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.

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: The purpose of this amendment is to provide regulatory flexibility to employers engaged in residential construction activities. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Labor
Office of Workers' Claims

(1) ALOSH means Appalachian Lab for Occupational Safety and Health.

(2) "B reader" is defined in KRS 342.794(3) which includes current certification with NIOSH or ALOSH.

(3) "Coal workers' pneumoconiosis" means a coal-related occupational pneumoconiosis which: (a) Results from the accumulation of carbon and silica in the lungs from the inhalation of coal dust in the severance and processing of coal; and (b) Is also known as anthracosilicosis or black lung.

(4) "Consensus" is defined in KRS 342.316(3)(b)(4).

(5) "Director" means the Director of the Division of Workers' Compensation Funds.

(6) "Executive Director" means the Executive Director of the Office of Workers' Claims.
Section 2. Application, Response, and Consensus Process. (1) To apply for resolution of a coal workers’ pneumoconiosis claim pursuant to KRS 342.732, the applicant shall file Form 102-CWP with the following completed attachments:
   (a) ILO form completed by a "B" reader;
   (b) The original x-ray interpreted by the "B" reader whose report is attached to Form 102-CWP;
   (c) Work History (Form 104) to include:
      1. All past jobs performed on a full- or part-time basis within twenty (20) years preceding the date of last exposure; and
      2. All jobs in which the plaintiff alleges exposure to coal dust;
   (d) Medical History (Form 102) to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, hospitals or other medical facilities where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals treating on respiratory or pulmonary condition;
   (e) Medical Release (Form 105);
   (f) If pulmonary dysfunction is alleged, a medical report from a physician, including spirometric tests performed and tracings; and
   (g) Social Security Release Form (Form 115).
(2) Within forty-five (45) days of the receipt of notice that the claim has been assigned to an administrative law judge, the employer shall file the following:
   (a) ILO form representing an interpretation of an x-ray by a "B" reader; and
   (b) Original x-ray interpreted by the "B" reader.
(3) Within fifteen (15) days of the receipt of the defendant's x-ray interpretation and x-ray, the executive director [commissioner] shall issue a notice to the parties stating whether consensus has been reached.
   (a) If there is consensus:
      1. The executive director [commissioner] shall issue a scheduling order; and
      2. The defendant shall have thirty (30) days from the notice of consensus to file its notice of claim acceptance or denial on a Form 111-OD.
   (b) If consensus has not been reached, the executive director [commissioner] shall forward the x-rays consecutively to three (3) "B" readers licensed in the state of Kentucky.
   (4) The executive director [commissioner] shall make a determination of consensus within fifteen (15) days of receiving the three (3) "B" reader reports.
      (a) The executive director [commissioner] shall issue a notice of whether consensus is reached within fifteen (15) days of receiving the reader reports;
      (b) Once a determination of whether consensus is met, a scheduling order shall be issued.
(5) Within thirty (30) days from the consensus notice issued by the executive director [commissioner], the defendant shall file its notice of claim acceptance or denial on Form 111-OD.
(6) Upon the executive director's notification of completion of the consensus process, the plaintiff shall have thirty (30) days in which:
      (a) To amend the claim to allege pulmonary impairment; and
      (b) To submit a medical report supporting that allegation and pulmonary function tests.
(7) If pulmonary impairment is alleged as a part of the application for adjustment of a coal workers' pneumoconiosis claim or upon amendment of the claim:
      (a) The defendant shall have the right to a pulmonary examination by a physician of its own choosing; and
      (b) The examination shall not be conducted until completion of the consensus process.
(8) Within thirty (30) days of notice that consensus has been reached by the executive director [commissioner], a party may challenge consensus by written notification to the office [department] and opportunity to participate.
(9) At the benefit review conference or no later than ten (10) days prior to a scheduled hearing, whichever is later, a claimant who was age fifty-seven (57) or older as of the date of last exposure shall individually or through counsel inform the administrative law judge in writing of the desire to opt for a twenty-five (25) percent permanent partial disability award instead of retaining incentive benefits, if that award is appropriate under KRS 342.732.
(10) A miner who is otherwise eligible for a twenty-five (25) percent permanent partial disability pursuant to KRS 342.732 may exercise his or her (1) time option to choose retaining incentive benefits instead of the permanent partial disability award by filing with the administrative law judge in writing his desire to do so prior to the finality of the administrative law judge's decision.

Section 3. Discovery and Evidence. (1) The parties may [shall not] submit one (1) any additional x-ray reading of one (1) of the original x-rays submitted by the parties as stated in Section 2 of this administrative regulation [readings except what is required by Section 2 of this administrative regulation].
(2) The x-ray readings submitted by the plaintiff, defendant and, if applicable, the three (3) "B" readers shall be the only x-ray readings considered as evidence by the administrative law judge.
(3) The three (3) "B" reader reports obtained by the office [department] shall be admitted into evidence without the necessity of a notice of filing by any party.

Section 4. Medical Reports in the Consensus Process. (1) Only x-ray reports from "B" readers shall be admissible into evidence.
(2) Medical reports submitted from the plaintiff or defendant shall include:
      (a) A CV or medical qualifications index number for the physician; and
      (b) A certification that the physician maintains current "B" reader status.
(3) If consensus is not reached initially with the reports of the physicians submitted by the plaintiff and defendant, the executive director [commissioner] shall:
      (a) Send the x-rays consecutively to the three (3) "B" readers on a random basis; and
      (b) Insure that the "B" readers selected did not provide an initial reading of the plaintiff or defendant.
(4) "B" readers selected by the executive director [commissioner] shall:
      (a) Submit the report on the ILO form; and
      (b) Return the completed report to the Office [Department] of Workers Claims with the x-rays within twenty (20) days of the date it was sent to the physician.
(5) If consensus is challenged by a party, the administrative law judge may allow timely cross-examination of a medical evaluator that participated in the consensus process at the expense of the moving party.

Section 5. (1) This section shall apply to consideration of the following:
      (a) Claims with a last exposure date between December 12, 1996 and July 14, 2002; or
      (b) Claims in which the last exposure was prior to December 12, 1996 but was subject to a university evaluation pursuant to KRS 342.315(2) and dismissed upon a finding that the miner did not prove the presence of coal workers' pneumoconiosis.
(2) Any party seeking reconsideration of a claim in accordance with the provisions of KRS 342.732 shall file a motion to reopen which may be on Form MTR-2.
(3) The motion to reopen shall be accompanied by the following:
      (a) A current medical release Form 106 executed by the plaintiff;
      (b) An affidavit which states:
         1. The date of last exposure;
         2. The claim is appropriate for consideration pursuant to the retroactive provisions of KRS 342.752;
         3. The claim was not dismissed upon grounds other than failure to meet medical eligibility standards; and
         4. If the last exposure was prior to December 12, 1996, the prior claim was dismissed upon a finding the miner did not prove the presence of coal workers' pneumoconiosis radiographically;
(c) If an award was granted under the provisions of KRS 342.732 in effect prior to July 15, 2002:  
1. A statement of the amount awarded and benefits actually received; and  
2. A copy of the previous award or, if settled, a copy of the Form 110 and any accompanying documents;  
(d) An updated work history (Form 104); and  
(e) An updated medical history (Form 105).  
(f) If the requirements of subsections (1) and (3) of this section have not been met, an administrative law judge shall issue an order summarily dismissing the motion to reopen.  
(g) If a motion to reopen is filed, and an administrative law judge determines that the requirements in subsections (1) and (3) of this section have been met, the executive director [commissioner] shall:  
(a) Obtain the original x-ray or x-rays performed at the university medical schools pursuant to KRS 342.315 and provide it to three (3) "B" readers licensed in the state of Kentucky who have agreed to participate on the consensus "B" reader list; and  
(b) Insure that a university "B" reader who offered an interpretation of the x-ray in the original claim is excluded from the consensus interpretations.  
(2) Within fifteen (15) days of receipt of the three (3) "B" readers' reports, the executive director [commissioner] shall:  
(a) Issue notice to the parties as to whether consensus has been reached; and  
(b) Assign it to an administrative law judge for determination of whether a prima facie showing of entitlement to greater benefits has been made.  
(3) If an administrative law judge finds a prima facie showing of entitlement to greater benefits, the executive director [commissioner] shall:  
(a) Issue notice scheduling the matter for a prehearing conference; and  
(b) Issue a scheduling order for the presentation of proof to the parties.  
(4) Additional x-ray readings or pulmonary function studies shall not be submitted as evidence for consideration by the administrative law judge.  
(5) If consensus has been reached, the parties shall have thirty (30) days to notify the office [department] and opposing parties of intent to challenge consensus.  
(6) If the prior claim was settled, a statement contained in the agreement as to jurisdiction, coverage under KRS Chapter 342, liability of the employer, or nature and extent of disability shall not be considered by the administrative law judge as an admission against interest.  

Section 6. Use of American Medical Association's "Guides to the Evaluation of Permanent Impairment" in Coal Workers' Pneumoconiosis Cases. (1) Predicted normal values for FVC and FEV1 shall be determined in accordance with the latest edition of the American Medical Association Guideline. Age shall be determined as of the date of the evaluation. Height shall be measured while the plaintiff stands in his stocking feet and shall be rounded to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.  
(2) Formulas established by the guidelines for predicted normal FVC and FEV1 shall be applied and predicted values computed.  

Section 7. Request for Participation by the Kentucky Coal Workers' Pneumoconiosis Fund. (1) Following a final award or order approving settlement of a claim for coal workers' pneumoconiosis benefits pursuant to KRS 342.732, the employer shall file a written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund within thirty (30) days and shall serve copies of the request on all other parties.  
(2) A written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund shall be in writing and include the following documents:  
(a) Plaintiff's application for resolution of claim;  
(b) Defendant's notice of resistance, notice of claim denial or acceptance, and any special answer;  
(c) All medical evidence upon which the award or settlement was based;  
(d) The notice of consensus issued by the executive director [commissioner], if rendered;  
(e) Final opinion or order of an administrative law judge determining liability for benefits or settlement agreement and order approving settlement agreement;  
(f) If an administrative law judge's award was appealed, the appellate opinions; and  
(g) If the request for participation includes retaining incentive benefits under KRS 342.732, a certification by the requesting party that the plaintiff meets the relevant statutory criteria.  
(3) If the request for participation is based upon the settlement of a claim, the employer shall submit a Form 110-CWP settlement agreement that represents liability exclusively for coal workers' pneumoconiosis benefits, and does not include any sums for other claims which the plaintiff may have against the employer.  
(4) In claims arising under KRS 342.792, if the employer fails to submit a request for participation within thirty (30) days of the final award or order approving settlement, the plaintiff or an administrative law judge may file a written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund within sixty (60) days of the date of the final award or order approving settlement.  
(5) Within thirty (30) days following receipt of a completed request for participation, the director of the Kentucky Coal Workers' Pneumoconiosis Fund shall notify the employer and all other parties of acceptance or denial of the request.  
(6) A denial shall be in writing and based upon any of the following findings by the director:  
(a) Failure to file a written request for participation within the time limits specified in this administrative regulation without good cause;  
(b) The employer failed to defend the claim;  
(c) The employer entered into a settlement agreement not supported by the medical evidence, or which includes sums for claims other than coal workers' pneumoconiosis or which was procured by fraud or mistake; or  
(d) The award or settlement was for retaining incentive benefits and the request for participation did not include the training or education certification required by this administrative regulation.  
(7) Denial of a request for participation may be appealed by any party to an administrative law judge within thirty (30) days following receipt of the denial.  
(8) The administrative law judge shall:  
(a) Determine if the denial was arbitrary, capricious, or in excess of the statutory authority of the director; and  
(b) Not reexamine the weight assigned to evidence by an administrative law judge in an award.  
(9) Except in claims under KRS 342.792, the employer shall promptly commence payment on all of the liability pursuant to the award or order and shall continue payment until the liability of the Kentucky Coal Workers' Pneumoconiosis Fund is established.  
(a) This duty of prompt payment shall continue during pendency of an appeal from denial of a request for participation.  
(b) In claims arising from KRS 342.792, the Kentucky Coal Workers' Pneumoconiosis Fund shall promptly commence payment upon its acceptance of the claim.  
(10)(a) Except in claims under KRS 342.792, upon an appeal from the denial of a request for participation, if the Kentucky Coal Workers' Pneumoconiosis Fund does not prevail, it shall reimburse the employer for its proportionate share of the liability with interest accrued from the date of denial.  
(b) In an appeal of a denial in a claim arising under KRS 342.792, in which the Kentucky Coal Workers' Pneumoconiosis Fund does not prevail, the fund shall commence payment pursuant to the opinion and award or order approving settlement with interest accrued from the date of the denial. All interest shall be paid at the rate established in KRS 342.040.  

Section 8. Any procedures not specifically set forth in this administrative regulation shall be governed by the guidelines set forth in 803 KAR 25:010, Procedure for adjustments of claims.  
Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form 102-CWP, Application for Resolution of Coal Workers' Pneumoconiosis Claim (June 2005 [July-2006] Edition);
(b) Form 104, Plaintiff's Employment History (January 1, 1997 Edition);
(c) Form 105, Plaintiff's Chronological Medical History (January 1, 1997);
(d) Form 106, Medical Waiver and Consent (January 1, 1997);
(e) Form 115, Social Security Release (January 1, 1997 Edition);
(f) ILO Form;
(g) Form 111-OD, Notice of Claim Denial or Acceptance (January 1997 Edition);
(h) Form 110-CWP, Agreement As To Compensation and Order Approving Settlement (July 2002 Edition); and
(i) Form MTR-2, Motion to Reopen KRS 342.732 Benefits (July 2002 Edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Workers' Claims, Prevention Park, 657 To Be Announced Avenue, Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4 p.m.

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 9, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2005, at 10 a.m. (EST) at the offices of the Office 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 by October 14, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. 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: Carla H. Montgomery, General Counsel, Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 584-5550, ext. 4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the procedures to administer coal workers' pneumoconiosis claims and retaining incentive benefits.
(b) The necessity of this administrative regulation: It is imperative that procedures be set forth to resolve coal workers' pneumoconiosis claims, as injured workers and employers know procedures to handle these cases.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It meets the requirements of KRS 342.280(1), 342.316(3)(a), 342.720(3), and 342.732(5) by setting forth procedures in coal workers' pneumoconiosis claims.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Office of Workers' Claims and administrative law judges have specific procedures so claims are resolved consistently and efficiently.
(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 conform with the ruling of the Supreme Court of Kentucky and allow an additional x-ray to be submitted. We will also eliminate the imposed limit on evidence considered by administrative law judge.
(b) The necessity of the amendment to this administrative regulation: We must amend the administrative regulation to conform with Supreme Court ruling in Hunter Excavating v. Gordon Bartum, et al., 2004-SC-0456-SC.
(c) How the amendment conforms to the content of the authorizing statutes: The Supreme Court ruled that our current administrative regulation does not conform with the statutes so we are filing this amendment.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow an additional x-ray report by a B-reader to be submitted to rebut the consensus process.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All claimants alleging coal workers' pneumoconiosis injury, employers involved with coal insurance carriers, plaintiff and defense attorneys.
(f) 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: Both parties will be allowed to submit an additional x-ray report. The administrative law judge will not be restricted to consider only limited evidence.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost to implement.
(b) On a continuing basis: Same as (a) above.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Normal budget of Office of Workers' Claims will be used.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are necessary.
(f) TIERING: Is tiering applied? Tiering is not applied, because the amendments will be applied equally.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Workers' Claims
(Amendment)


RELATES TO: KRS 342.019, 342.020, 342.035[342.736]
STATUTORY AUTHORITY: KRS 342.020, 342.035[41], 342.736

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the Executive Director [Commissioner] of the Office [Department] 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 executive director to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions. (1) "Medical fee schedule" means the Workers' Compensation Medical Fee Schedule for Physicians.
(2) "Physician" is defined by KRS 342.0011(32)[32]- and shall include other health care or medical services providers to whom a procedure code listed in the medical fee schedule is applicable if another fee schedule of the Department of Workers' Claims does not apply.

Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by
physicians under KRS Chapter 342[,] and
(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 Office [Department] of Workers' Claims applies; or
   (b) A lower fee is required by KRS 342.035 or a managed care plan approved by the executive director [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.
(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 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.

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

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: September 8, 2005
FILED WITH LPC: September 7, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2005, at 10 a.m. ET at the offices of the Office 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 by October 14, 2005, 5 p.m. ET at the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON Carla H. Montgomery, General Counsel, Office of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery
(1) Provide a brief summary of:
(2) What this administrative regulation does: This administrative regulation establishes a medical fee schedule for physicians.
(b) The necessity of this administrative regulation: In KRS 342.035, the executive director is required to ensure that all fees, charges, and reimbursements for medical services are limited to charges that are fair, current, and reasonable.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By establishing a medical fee schedule for physicians, the Office of Workers' Claims ensures fair, reasonable, consistent medical costs to all injured workers, employers, and insurance carriers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have a medical fee schedule for effective cost control in the workers' compensation system.
(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 will incorporate the updated fee schedule. We have added language to state that any physician out of this state is deemed to accept the fee schedule.
(b) The necessity of the amendment to this administrative regulation: Our agency is required to update the fee schedule. It is appropriate to incorporate a new updated fee schedule. It is also important that Kentucky workers who visit doctors out of state are charged consistent fees in accordance with the fee schedule.
(c) How the amendment conforms to the content of the authorizing statutes: The updated fee schedule conforms with the statute by providing fees that are reasonable and current.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide an updated fee schedule and keep costs fair and reasonable.
(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: Injured workers, employers, insurance carriers, and physicians.
(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: Insurers' carriers will pay physicians for treatment of injured workers in accordance with prices set by the medical fee schedule.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost to implement this administrative regulation.
(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: The usual budget of the Office of Worker's Claims.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in funding to our agency. There may be some increase for particular medical services in accordance to what is reasonable and fair in the commercial market.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation updates the amounts paid to physicians for medical services provided to injured workers. The fee schedule was established in 1995. The fees are adjusted to ensure fair, current, and reasonable compared to similar treatment of injured persons where treatment is paid by general health insurers.

TIERING: Is tiering applied? No, tiering is not applied, because this regulation is equally applied to all affected parties.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority

(Revision)

810 KAR 1:018. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.215, 220.240(2), 230.260(1, (2), (3), (6), (7), 230.265(2), 230.320(1)
STATUTORY AUTHORITY: KRS 230.215(2), 220.240(2), 230.260(1), (2), (3), (6), (7), 230.265(2), 230.320(1)

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215, 230.280, and 230.320 authorize [grant] the Kentucky Horse Racing Authority [Commission] authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. This administrative regulation governs the use of drugs, medications, and substances in [medicinal-en] horses and certain practices relating to horses and establishes requirements and controls in the administration of drugs, [medicinal-en] medications, and substances and certain prohibited practices.

Section 1. Use of Medication. Therapeutic measures and medication required to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(a) Except as otherwise provided in this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, [medicinal-en], substance, or metabolite derivative thereof that is a narcotic.

(b) Could serve as an anesthetic anesthetic or tranquilizer, or could cause the death of the horse by affecting the central nervous system.

(c) Could cause a cardiovascular disturbance or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of the horse, thereby affecting its performance.

(3) Medications, drugs, substances, or metabolite derivatives thereof that are listed in paragraph (a) of this section, or substances that cause an adverse effect on the performance of the horse, shall not be administered to, or be present in, the body of a horse.

(4) Therapeutic medications in excess of established thresholds set forth in this administrative regulation shall be prohibited.

(5) Substances present in a horse in excess of concentrations at which substances could occur naturally shall be prohibited.

(6) It shall be prima facie evidence that a horse had been administered and carried a drug, medication, [medicinal-en], substance, or metabolite derivative thereof prohibited by this section, and shall be prohibited if the horse was sampled and tested by the Arizona [Commission] veterinarian after a horse race or during training.

(b) The authority administrator [commission member] detected a drug, medication, [medicinal-en], substance or metabolite derivative thereof prohibited by [subsection(4)] of this section in the horse's body while running a race, if:

(a) A saliva, urine, blood, or other sample of urine from the horse was taken under the supervision of the Authority [Commission] veterinarian after a horse race in a race; and

(b) The Authority administrator [commission member] detected a drug, medication, [medicinal-en], substance or metabolite derivative thereof prohibited by [subsection(4)] of this section in the horse's body.

Section 2. Treatment Restrictions. (1) Except as provided in this administrative regulation, a person other than a veterinarian licensed to practice veterinarian medicine in the jurisdiction and licensed by the authority shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the Authority.

(2) A person other than a veterinarian licensed to practice veterinarian medicine in this jurisdiction and licensed by the Authority shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the Authority unless authorized to do so by the Authority.

(3) Veterinarians licensed to practice veterinarian medicine in this jurisdiction and licensed by the Authority shall use only one (1) time disposable needles, and shall dispose of them in a manner approved by the Authority.

(4) If a person has a medical condition which makes it necessary to have a needle and syringe at a location under the jurisdiction of the Authority, such person may administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the Authority.

(5) An Authority employee may accompany a veterinarian at a location under the jurisdiction of the Authority and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 3. Furosemide and Adjunct Bleeder Medication: Use on Race Day. (1) Furosemide may be administered to a horse that is entered to compete in a race.

(2) The use of furosemide shall be permitted under the following circumstances:

(a) Furosemide shall be administered on the grounds of a location under the jurisdiction of the Authority, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b) The syringe employed in the injection shall be made available immediately to the Authority veterinarian, steward, or Authority employee if requested.

(c) The furosemide dosage administered shall not exceed 500 mg. of furosemide or be less than 150 mg.

(d) The specific gravity of post-race urine samples shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in serum or plasma shall be performed. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(e) A horse that is on the furosemide list pursuant to Section 4 of the administrative regulation that does not show a detectable concentration of the drug in the post-race urine, serum, or plasma shall be in violation of this administrative regulation.

(f) Up to two (2) of the following adjunct bleeder medications may be administered to a horse not less than four (4) hours prior to post time for the race in which the horse is entered:

(a) Aminophylline and nitroglycerine;

(b) Carbocholine;

(c) Conjugated estrogens; and

(d) Tranexamic acid.

(g) The adjunct bleeder medications listed in subsection (3) of this section shall not be administered after December 31, 2006, unless authorized by the Authority.

(h) Scientific evidence to the satisfaction of the Authority, is provided to demonstrate the efficacy of such medications in mitigating the incidence of exercise-induced pulmonary hemorrhage.

(i) This administrative regulation is amended to permit the use of adjunct bleeder medications listed in this section.

Section 4. Furosemide List. (1)(a) A horse shall be eligible to race with furosemide if the licensed trainer or veterinarian determines that it would be in the horse's best interests to race with furosemide.

(b) Notification using prescribed Authority forms shall be provided to the Authority veterinarian in sufficient time to ensure public notification.

(c) Horses placed on the furosemide list and entered to start may be monitored by an Authority-approved representative during the four (4) hour period prior to post time for the race in which the horse is entered.

(2) A horse placed on the furosemide list shall remain on the list unless the licensed trainer or veterinarian submits a written request to remove the horse from the list. The request shall be on forms provided by the Authority veterinarian and shall be submitted to the Authority-approved representative not later than time of entry.

(3)(a) After a horse has been removed from the furosemide list, the horse shall not be placed back on the list for a period of sixty (60) calendar days unless it is determined by the trainer or veterinarian, in consultation with the Authority veterinarian, that it is necessary for the health of the horse.

(b) If a horse is removed from the furosemide list a second time in a three hundred sixty-five day period, the horse shall not be placed back on the list for a period of ninety (90) calendar days.

(4) A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be placed on the furosemide list in this jurisdiction.

Section 5. Permitted Nonsteroidal Anti-Inflammatory Drugs (NSAID's). (1) The use of one (1) of the following NSAIDs shall be permitted by a single intravenous injection not less than twenty-four (24) hours before post time for the race in which the horse is entered, provided the concentration in the horse's sample or specimen does not exceed the limits set forth in this section:

(a) Phenylbutazone - not to exceed five (5) micrograms per milliliter of plasma or serum;
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(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of plasma or serum.
(c) Ketoprofen - not to exceed ten (10) nanograms per milliliter of plasma or serum.
(2) NSAIDs other than those designated in subsection (1) of this section shall be prohibited.
(3)(a) The administering of more than one (1) permissible NSAID shall be considered a violation of this section.
(b) A finding of phenylbutazone below a concentration of one (1) microgram per milliliter of plasma or serum shall not constitute a violation of this section.
(c) A horse that has been administered a NSAID shall be subject to a saliva, urine, blood, or other sample or specimen being taken under the supervision of the Authority veterinarian to determine the quantitative NSAID level present in the horse or the presence of other drugs in the horse.

Section 6. Detention Area. (1) A licensed association shall provide and maintain on association grounds a detention area.
(2) The detention area shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of sample specimens for pre-race and post-race testing.
(3) The detention area shall be under the supervision and control of the Authority veterinarian.

Section 7. Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the instructions provided by the Authority veterinarian.
(2) An Authority veterinarian shall determine a minimum sample requirement for the Authority laboratory.
(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the Authority laboratory.
(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.
(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the Authority laboratory shall be secured as the split sample.
(d) Blood samples shall be collected not later than one (1) hour post-race.
(3) An owner or trainer may request that a specimen be:
(a) Taken from a horse he owns or trains by the Authority veterinarian; and
(b) Tested by the Authority laboratory.
(4) The cost of testing shall be borne by the owner or trainer requesting the test.
(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the detention barn.
(b) Buckets and water shall be furnished by the Authority veterinarian.
(c) If a body brace is to be used, it shall:
1. Be supplied by the trainer, and
2. Administered only with the permission and in the presence of the Authority veterinarian.
(d) A licensed veterinarian may attend to a horse in the test barn, but only in the presence of the Authority veterinarian.
(6) Within five (5) business days of receipt of notification by the Authority laboratory of a positive finding, the Authority shall notify the owner and trainer orally or in writing of the initial finding.
(7) The stewards shall schedule a hearing within fourteen (14) calendar days of notification by the Authority to the owner and trainer. The hearing may be continued in the discretion of the stewards.

Section 8. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:
(a) Split samples shall be secured in the test barn in the same manner as the samples for shipment to the Authority laboratory until such time as the split samples are packed and secured for shipment to the Authority laboratory. Split samples shall then be transferred to a freezer at a secure location approved by the Authority.
(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer at all times except as specifically provided by this administrative regulation.
(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.
(d) A log shall be maintained by the Authority veterinarian that shall be used each time a split sample freezer is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, the time the freezer was closed, and verification that the lock was secured prior to and after opening of the freezer. An Authority veterinarian or his or her designee shall be present when the freezer is opened.
(e) Evidence of a malfunction of a split sample freezer or samples that are not in a frozen condition during storage shall be documented in the log and immediately reported to an Authority veterinarian or a designated Authority representative.
(2)(a) A trainer or owner of a horse may request that a split sample corresponding to the portion of the specimen tested by the Authority laboratory be sent to another laboratory approved by the Authority for testing.
(b) The request shall be made in writing and delivered to the stewards within three (3) business days after the trainer of the horse receives oral or written notice of the positive findings of the Authority laboratory.
(c) A split sample so requested shall be shipped as expeditiously as possible.
(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of such testing. The Authority shall be responsible for paying the cost of shipping the split sample to the laboratory approved by the Authority for testing.
(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the Authority veterinarian shall constitute a waiver of any right to be present during split sample testing procedures.
(c) Prior to shipment, the Authority shall confirm:
1. That the split sample laboratory has agreed to provide the testing requested;
2. That the laboratory has agreed to send results to both the person requesting the testing and the Authority; and
3. That arrangements for payment satisfactory to the split sample laboratory have been made.
(d) The Authority shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the Authority.

Section 9. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer, the Authority shall provide a split sample chain of custody verification form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:
(a) The date and time the sample is removed from the split sample freezer;
(b) The sample number;
(c) The address where the split sample is to be sent,
(2) A split sample shall be removed from the split sample freezer by an Authority employee after notice to the owner, trainer, or designee thereof and an Authority-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the Authority. A form shall be signed by both the owner's representative, if present, and the Authority representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.
(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.
(4) The split sample chain of custody verification form shall be completed and signed by the representative of the Authority and the owner, trainer, or designee, if present.

(5) An Authority representative shall retain the original split sample chain of custody verification form and provide a copy for the owner, trainer, or designee, if requested.

Section 10. Medical Labeling. (1) A person on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly-licensed veterinarian in accordance with the regulations.

(3) Medications shall bear a prescription label which is securely attached and clearly prescribed to show the following:

(a) The name of the product;
(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;
(c) The name of each horse for which the product is intended or prescribed;
(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and
(e) The name of the trainer to whom the product was dispensed.

Section 11. Trainer Responsibility. (1) A trainer is responsible for the condition of horses in his or her care.

(2) A trainer shall be responsible for the presence of prohibited drug, medication, substance or metamorphic derivative, including permitted medication in excess of the maximum-allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metamorphic derivative that may constitute a violation of this administrative regulation.

(4) A trainer shall prevent a horse in his or her care from being used in violation of this administrative regulation regarding that horse's performance in a race in which the horse is claimed.

(5) A trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;
(b) Using the services of those veterinarians licensed by the Authority to attend horses that are on association grounds;
(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;
(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;
(e) Promptly reporting to the racing secretary and the Authority veterinarian when a horse enters the status of being a broodmare and is entered to race;
(f) Promptly notifying the Authority veterinarian of the reportable disease or communicable illness in a horse in his or her care;
(g) Promptly reporting the serious injury or death of a horse in his or her care to the Authority veterinarian and the racing secretary;
(h) Ensuring that every horse he or she has entered to race is present at the assigned stall for a prerace soundness inspection as prescribed by these administrative regulations;
(i) Ensuring the horse's presence in the paddock at least twenty (20) minutes before post time or at a time otherwise prescribed before the race in which the horse is entered;
(j) Personally attending in the paddock and supervising the saddling of a horse in his or her care, unless excused by the stewards;
(k) Attending the collection of a saliva, urine, blood, or other sample or specimen taken from a horse in his or her care or delegating a licensed employee of the owner to do so.

Section 12. Licensed Veterinarians. (1) Veterinarians licensed by the Authority and practicing at a location under the jurisdiction of the Authority shall be deemed to be under the supervision of the Authority veterinarian and the stewards. A veterinarian shall report to the stewards or the Authority veterinarian any violation of this administrative regulation.

Section 13. Veterinarians' Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the Authority shall submit a KRC-2 form to the Authority veterinarian containing the following information:

(a) The name of the horse treated;
(b) The type and dosage of drug or medication administered or prescribed;
(c) The name of the trainer of the horse;
(d) The date and time of treatment; and
(e) Other information requested by the Authority veterinarian.

(2) The report shall be signed by the practicing veterinarian.

(3) The report shall be on file not later than the time prescribed on the next race day by the Authority veterinarian.

(4) The report shall be deemed confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards or the Authority, or to the trainer or owner of the horse at the time of report.

(5) A timely and accurate filing of a veterinarian's report that is consistent with the analytical results of a posttest reported by the laboratory approved by the Authority may be used as a mitigating factor in determining the appropriate penalties pursuant to this administrative regulation.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 16 of this administrative regulation shall report such fact immediately to the Authority veterinarian or to the stewards.

Section 14. Veterinarian's List. (1) The Authority veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the Authority veterinarian, the horse is capable of competing in a race.

(3) The Authority veterinarian shall maintain a list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the Authority veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleedlist and be ineligible to race for the following time periods:

(a) First incident - fourteen (14) days;
(b) Second incident within a period of thirty (30) days;
(c) Third incident within a period of sixty (60) days;
(d) Fourth incident within a period of one hundred eighty (180) days.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be deemed to be the first day of the recovery period.

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(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse shall be removed from the bleed list only upon the direction of the Authority veterinarian, who shall certify in writing to the stewards the recommendation for removal.

(8) A horse that has been placed on a bleed list in another jurisdiction may be placed on the bleed list maintained by the Authority veterinarian.

Section 15. Distribution of Purse, Barn Scares, and Retention of Samples. (1) Purse money shall be distributed seventy-two (72) hours after a race unless the Authority laboratory has issued a preliminary or final report indicating the presence of a prohibited drug, medication, substance, or metabolic derivative in the saliva, urine, blood, body fluids, or other sample or specimen taken from a horse.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be deemed a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) Upon receipt of a negative laboratory finding, the Executive Director of the Authority or the stewards shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the finding, including, but not limited to, a thorough search of the trainer’s barn and the interviewing of persons who may have been involved in the incident or have knowledge regarding it.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the Executive Director and Chairman of the Authority detailing the findings of the investigation.

(5) If the purse money has been distributed, the stewards shall order it returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(6) At the conclusion of testing, the remaining portion of the sample at the Authority laboratory and the split samples remaining at the detention barn facility may be retained at a proper temperature at secure facilities for a period of up to one (1) year, provided, however, if a positive laboratory report has been issued, the Authority shall use its reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded.

Section 16. Other Prohibited Practices. In addition to other prohibitions set forth in this administrative regulation, the following shall be prohibited:

(1) The possession or use of a drug, medication, or substance on a location under the jurisdiction of the Authority;
   (a) For which a recognized analytical method has not been developed, or for which the administration or presence of such medicine, drug, or substance;
   (b) The use of which may endanger the health and welfare of the horse; or
   (c) The use of which may endanger the safety of the rider;

(2) The possession or use of a drug, medication, or substance at a location under the jurisdiction of the Authority that has not been approved by the United States Food and Drug Administration (FDA) for use in humans or animals;

(3) The possession or use of the following blood-doping agents at a location under the jurisdiction of the Authority:
   1. Erythropoietin;
   2. Darbepoetin;
   3. Oxandrolone;
   4. Anastrozole;
   5. Any substance that abnormally enhances the oxygenation of body tissue,

(4) The practice, administration, or application of a treatment, procedure, or therapy which may:
   (a) Endanger the health or welfare of a horse, or
   (b) Endanger the safety of a rider;

(5) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy unless the following conditions are met:
   1. A treated horse shall not race for a minimum of six (6) days following treatment;
   2. A veterinarian licensed to practice by the Authority shall administer the treatment;
   3. The Authority veterinarian shall be notified prior to the delivery of the machine on association grounds, and
   4. A report shall be submitted by the veterinarian administering the treatment to the Authority veterinarian on the prescribed form within twenty-four (24) hours of treatment.

(6) The administration of an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse.

(7) Possession or use of the ingredients or the paraphernalia associated with the administration of an alkalizing substance to a horse with or without a concentrated form of carbohydrate.

(8) A serum total carbon dioxide (TCO2) level equal to or exceeding thirty-seven (37) millimoles per liter in a horse; provided, however, no violation shall be deemed to have occurred if the TCO2 level was found to be normal for the horse after following the quarantine procedure set forth in Section 17 of this administrative regulation.

(9) Possession or use of a blood gas machine by anyone other than a veterinarian licensed by the Authority at a location under the jurisdiction of the Authority.

Section 17. TCO2 Testing and Procedures. (1) The stewards or Authority veterinarian may order the prerace or post-race collection of blood samples from a horse to determine the total carbon dioxide concentration in the serum or plasma. The winning horse and other horses as directed by the stewards, may be tested in each race.

(b) Prerace testing shall be done at the time, place, and manner directed by the Authority veterinarian. If testing is post-race, blood samples shall be taken not less than one (1) hour after racing.

(c) A sample consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO2 concentration in the serum or plasma. If the Authority laboratory determines that the TCO2 level is equal to or exceeds thirty-seven (37) millimoles per liter, the Executive Director of the Authority shall be informed of the positive finding.

(d) Split Sample testing for TCO2 may be requested by an owner or trainer in advance of the collection of such samples by the Authority veterinarian; however, the collection and testing of a split sample for TCO2 testing shall be done at a time, place, and manner directed by the Authority veterinarian.

(2) The cost of split sample testing shall be borne by the owner or trainer.

(3) If the level of TCO2 is determined to be equal to or exceed thirty-seven (37) millimoles per liter and the licensed owner or trainer of the horse certifies in writing to the stewards within twenty-four (24) hours after the notification of the result that such level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the stewards, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be rested periodically by the Authority veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by an Authority representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(1) If the Authority veterinarian is satisfied that the horse's level of TCO2, as registered in the previous testing, is physiologically normal for that horse, the stewards shall permit the horse to race. In such case, the steward or other authority may require that the horse re-establish that its TCO2 level is physiologically normal pursuant to the quarantine procedure set forth in this section.
Section 18. Post-mortem examination. (1) The Authority veterinarian may require a post-mortem examination of a horse that dies or is destroyed at a location under the jurisdiction of the Authority.
(2) The Authority or its designee shall coordinate with the trainer or owner to determine and address any insurance requirements.
(3) The Authority veterinarian may take possession of a horse that dies or is destroyed for post-mortem examination. The Authority veterinarian may submit saliva, blood, urine, and other samples and specimens collected during a post-mortem examination for analysis. Upon completion of the post-mortem examination, the remains may be returned to the owner or disposed of at the owner's option and expense.
(4) The presence of a prohibited drug, medication, substance, or metabolite derivative thereof in a specimen collected during the post-mortem examination of a horse may constitute a violation of this administrative regulation.

Section 19. Claimed horses. (1) Any person who claims a horse may void the claim if the horse is found to have:
(a) Class A, B, or C drugs in its system; or
(b) A TCO2 level equal to or exceeding 37.0 millimoles per liter. Prohibited Activity-Prohibited. (1) On the day of a race for which a horse is entered, only a licensed veterinarian shall administer, cause to be administered, participate or attempt to participate in any manner in the administration of a medication, drug, substance, or metabolite derivative thereof.
(2) A medication, drug, substance, or metabolite derivative thereof shall not be administered less than four (4) hours prior to post time.
(3) The commission veterinarian or its designated representative may accompany a veterinarian.

Section 3. Responsibility for Prohibited Activity. (1) Any person having possession, custody, or control of a horse entered in a race governed by the provisions of this administrative regulation shall be subject to the provisions of this administrative regulation, which revolves around the horse's welfare.
(2) Any person shall be subject to disciplinary action, if he administered, caused, participated or attempted to participate in any manner in the administration of a medication, drug, substance, or metabolite derivative thereof in violation of Section 1 or 2 of this administrative regulation.

Section 4. Record of Administration. (1) A licensed veterinarian who administers or prescribes the treatment of a horse registered for racing with medication, drug, substance, or metabolite derivative thereof shall submit a daily report of the treatment to the commission veterinarian.
(2) If an unreported medication, drug, substance, or metabolite derivative thereof, has been detected by the commission veterinarian, the licensed veterinarian and trainer shall:
(a) Be issued a warning by the stewards, if the;
1. Unreported medication, drug, substance, or metabolite derivative thereof, is not prohibited by the provisions of this administrative regulation, and
2. Licensed veterinarian or trainer had not previously administered an unreported medication, drug, substance, or metabolite derivative thereof, and
(b) Disciplined by the stewards if the:
1. Unreported medication, drug, substance, or metabolite derivative thereof, is prohibited by the provisions of this administrative regulation, and
2. Licensed veterinarian or trainer had previously administered an unreported medication, drug, substance, or metabolite derivative thereof.

Section 5. (1) A medication, drug, substance, or metabolite derivative thereof shall be prohibited if it is specified in:
(a) "Prohibited Medication, Drug, Substance, or Metabolite Derivative KRC-23," or
(b) Uniform Classification Guidelines for Foreign Substances; or
(2) A type specified by Section 4 of this administrative regulation.

Section 6. Detention Area. (1) A licensed association shall provide and maintain on association grounds a detention area.
(2) The detention area shall be for the holding of any horses temporarily detained for the taking of sample specimens for chemical testing.
(3) The detention area shall be under the supervision and control of the commission veterinarian.

Section 7. Horses to be Tested. (1) The stewards may at any time order the taking of a blood, urine, saliva, or other specimen from a horse entered to race.
(2) The owner or trainer may request that a specimen be:
(a) Taken from a horse he owns or trains by the commission veterinarian; and
(b) Tested by the commission chemist.
(3) The owner or trainer who requested the test shall:
(a) Meet the qualifications by taking a high degree of care in safeguarding the horse from tampering; or
(b) Relied on the professional ability of a licensed veterinarian.

Section 8. Procedure for Taking Specimens. (1)(a) A horse from which specimens are to be drawn shall:
1. Be taken to the detention area at the time prescribed by the commission veterinarian; and
2. Remain there until released by the commission veterinarian.
(b) Only the owner, trainer, or handler of a horse to be tested shall be admitted to the detention area without permission of the commission veterinarian.
(2)(a) Only stable equipment necessary for washing and cooling a horse shall be permitted in the detention area.
(b) Buckets and water shall be furnished by the commission veterinarian.
(c) A body brush is to be used, if shall:
1. Be supplied by the trainer; and
2. Administered only with the permission and in the presence of the commission veterinarian.
(d) A licensed veterinarian shall attend a horse in the detention area and on the premises of the commission-veterinarian.

(2) One (1) of the following persons shall be present and attest to the taking of a specimen from a horse:
   (a) The owner;
   (b) The trainer; or
   (c) For a claimed horse, the trainer in whose name the horse raced or;
   (d) An able-bodied representative designated by the owner or trainer.

(3) A container that had been used for specimen shall be:
   1. Thoroughly cleaned in the commission chemist's laboratory; and
   2. Sealed with the commission chemist's laboratory seal.

(b) The laboratory stamp shall be broken only in the presence of one (1) of the witnesses specified by subsection (3) of this section.

(c) Samples taken from a horse, by the commission veterinarian or his assistant at the detention barn, shall be placed equally in two (2) containers and designated as the “primary” and “secondary” samples.

(3) A sample shall be sealed with tamper-proof tape and bear a portion of the multiple-part “identification tag” that has identical printed numbers only. The other portion of the specimen-identification tag bearing the same printed identification number shall be detached in the presence of the witness specified by subsection (2) of this section.

(b) The commission veterinarian shall:
   1. Identify the horse from which the specimen was taken;
   2. Document the race and day verified by the witness; and
   3. Place the detached portions of the identification tag in a sealed commission-specimen-identification tag envelope for delivery only to the stewards.

(c) After both portions of samples have been identified as provided by paragraph (a) of this subsection, the “primary” sample shall be delivered to the commission chemists laboratory.

(d) The “secondary” sample shall remain in the custody of the commission veterinarian at the detention area and shall be preserved in a temperature-controlled environment (in case it is needed for analysis).

(e) The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff knows the identity of the horse from which a specimen was taken prior to the completion of all testing.

(f) If the commission chemist has reported that the “primary” sample delivered to him does not contain a prohibited medication, drug-substance, or metabolite-derivative thereof, the “secondary” sample shall be properly disposed.

(g) The commission veterinarian may permit a horse to be returned to its barn and usual surroundings for the taking of a specimen under his supervision, if he has determined that:
   1. The horse has remained in the detention area for a reasonable time; and
   2. It will not be possible to obtain a specimen from the horse in the detention area.

(h) If fifty (50) ml of less of urine is obtained:
   1. It shall not be split;
   2. It shall be considered the primary sample;
   3. It shall be tested as other primary samples are tested; and
   4. If the total urine collected is less than one hundred (100) ml, the secondary sample shall consist of the balance of the collected urine that exceeds fifty (50) ml.

(j) A blood sample shall be initially taken in a quantity sufficient to ensure that ample amounts are obtained for the primary and secondary sample.

(k) The primary- and secondary-blood sample shall be equal in quantity and consist of at least twenty (20) ml for a total of forty (40) ml.

(l) The commission chemist shall notify the commission, orally and in writing, if an initial finding establishes the presence of a medication, drug-substance, or metabolite-derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation or a negative.

(m) Within twenty-four (24) hours of receipt of notification by the commission chemist, the commission shall notify the owner and trainer orally and in writing of the initial findings.

(n) Upon an initial finding of a medication, drug-substance, or metabolite-derivative thereof prohibited by Sections 1 and 2 of the administrative regulation or a negative, the commission veterinarian shall immediately freeze the secondary urine sample.

1. The secondary sample shall be tested after notification of the owner, trainer or other responsible person, if requested.

2. Testing of the secondary sample shall be performed at a referee laboratory selected by representatives of the owner and trainer or from a laboratory approved by the commission.

(i) The referee laboratory shall pay the cost of preparing and shipping a sample. The cost of testing at the referee laboratory shall be assumed by the person who requested the test.

(j) The referee laboratory shall be informed by the commission veterinarian of the initial finding of the commission chemist before it conducts its test.

(k) To ensure the identity of the secondary sample and that the test of the sample is performed satisfactorily, a commission representative, the owner, or trainer may be present when the secondary sample is opened, repacked and tested.

(l) It shall be concluded that there is insubstantial evidence upon which to charge a person with a violation of the provisions of this administrative regulation, if:

1. The finding of the referee laboratory did not confirm the finding of the initial test performed by the commission chemist, and
   2. There is no other independent proof that a medication, drug-substance, or metabolite-derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation was administered to the horse that was the subject of the test.

(m) The commission veterinarian shall:

1. Safeguard a specimen in his possession;

2. Deliver a specimen only to the commission chemist after it has been sealed, and

3. Ensure that the identity of the horse from which a sample was taken is not revealed.

Section 9. Procedure for Testing: (1)(a) The commission chemist shall safeguard and test each specimen delivered to his laboratory by the commission veterinarian.

(b) A specimen shall be divided into two (2) portions.

1. The first portion shall be used for initial testing for unknown substances; and

2. The second portion shall be used for confirmation tests.

(c) For each specimen, the commission chemist shall conduct:

1. Individual tests that are capable of screening a specimen for medication, drug-substance, or metabolite-derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation; and

2. Other tests necessary to detect and identify a medication, drug-substance, or metabolite-derivative thereof that may be prohibited by Sections 1 and 2 of this administrative regulation.

(d) Pooling shall be permitted upon approval of the commission veterinarian.

2. (a) Upon a finding of a test negative for prohibited medication, drug-substance, or metabolite-derivative thereof, the remaining portion of the specimen may be discarded.

(b) If the finding of a test is suspicious or positive for a medication, drug-substance, or metabolite-derivative thereof, prohibited by Sections 1 and 2 of the administrative regulation, the:

1. Test shall be reconfirmed; and

2. Remaining portions of specimen shall be preserved and protected until the stewards rule that the specimen shall be discarded.

4. (a) The commission chemist shall submit to the state steward a written report on each specimen that has been tested.

(b) The report shall state, by specimen tag identification number, whether a specimen had tested negative or positive for a medication, drug-substance, or metabolite-derivative thereof, prohibited by Sections 1 and 2 of the administrative regulation.

(c) The commission chemist shall report a test finding only to the state steward or his designee.

(d) If the commission chemist finds a specimen suspicious for a medication, drug-substance, or metabolite-derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation, he may request additional testing for adequacy and confirmation.

(e) A racing association shall not distribute a purse until the stewards notify it that tests relating to prohibited medication, drug-substance,
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or metabolite derivative thereof, prohibited by Sections 1 and 2 of the administrative regulation, have
1. Been completed;
2. Have not shown the presence of a medication, drug, substance, or metabolite derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation.
(b) The commission chemist shall make a further report to the stewards or commission veterinarian to improve his surveillance.
(c) The report shall be confidential and shall not be evidence for disciplinary action.
(d) The report may be disclosed to the trainer or veterinarian by the stewards or commission veterinarian to improve his surveillance.
(e) The report may be submitted to the Equine Research Program at the University of Kentucky for pharmacological evaluation.

Section 20. [45] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Veterinarian Report of Horses Treated to be Submitted Daily," KRC-2 (5/97);
(b) "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule (8/05);
(c) "Prohibited Medication, Drug, Substance, or Metabolite Derivative KRC-3 (5/98);"
(d) "Uniform Classification Guidelines for Foreign Substances, April 1998," Association of Racing Commissioners International, Inc.;
(e) "Specimen Identification Tag, KRC-5 (5/98);" and
(f) "Specimen Identification Tag Envelope, KRC-6 (5/98)."

LA JUANA S. WILCHER, Secretary
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 15, 2005
FILED WITH LRC: August 19, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on October 24, 2005 at 9 a.m. at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Ironworks Parkway, Lexington, Kentucky 40511. 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 that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard shall be given the opportunity to present relevant and pertinent material to the proposed administrative regulation. A transcript of the public hearing shall not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written comments of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jim Gallagher, Executive Director, Kentucky Horse Racing Authority, Kentucky Horse Park, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 40511, phone 859-246-2040, fax 859-246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jim Gallagher, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation is designed to govern the administration of drugs and medications to thoroughbred horses. The administrative regulation establishes the drugs and medications that can be administered to a horse on the day of a race and in what amounts. The administrative regulation also designates certain actions as prohibited practices. Additionally, the administrative regulation also sets forth the testing procedures to be employed in order to determine whether prohibited substances have been administered to a horse.
(b) The necessity of this administrative regulation: This administrative regulation is critical to the racing industry in Kentucky. The importance of a comprehensive, effective, and far-reaching administrative regulation governing the use of drugs and medications in horses cannot be overstated. It is critical that this administrative regulation be clear and enforceable. In order to maintain the integrity of horse racing and protect the physical well-being of jockeys, it is necessary that the racing industry have strong and enforceable rules, coupled with sanctions, governing what drugs, medications or other substances can be in the body of a horse at the time it goes to the starting gate to compete in a race.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.240(2) specifically authorizes the Kentucky Horse Racing Authority ("KHRA") to "promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." KRS 230.215(2) vests in the KHRA "forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth..." KRS 230.260(3) provides the KHRA with the "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state..." KRS 230.320(1) authorizes the KHRA to "promulgate administrative regulations under which any license may be denied, suspended or revoked..." Based on the foregoing, this administrative regulation and the amendment to it conforms with the content of the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The emergency amendment to 810 KAR 1:018, the drug and medication administrative regulation, will provide an effective, comprehensive, and far-reaching rule regarding the administration of drugs and medications to thoroughbred horses and will, therefore, directly assist in the effective administration of the statutes in Kentucky. The current administrative regulation, if strictly applied as written, is wholly impractical, ineffective, and unrealistic. The present rule is far too restrictive and outlaw even medications that are universally accepted in the racing industry. As a result of the inadequacy of the present regulation, the former Kentucky Racing Commission, in October 2002, issued an internal policy memorandum which permitted various drugs and medications to be administered to horses not less than 4 hours prior to a race. That internal policy, which did not have the force of law, was far too lenient in terms of allowing certain drugs to be given to a horse close to post time. This emergency amendment is comprehensive and far-reaching and is a result of extensive and ongoing negotiations on the part of the Kentucky Equine Drug Research Council and national organizations dedicated to putting together the best possible rule regarding race-day medications.

(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 emergency amendment will largely replace the existing administrative regulation. The present regulation prohibits a horse from carrying in its body virtually any medication, drug, substance or metabolite derivative. The current regulation is far too restrictive and would, arguably, prohibit even anti-bloody medications from being administered to a horse on the day of a race. The emergency amendment would allow anti-bloody medications to be administered to a horse not less than 4 hours prior to post time. Additionally, the emergency amendment permits a horse to receive certain specified nonsteroidal anti-inflammatory drug not less than 24 hours prior to post time. The current regulation, strictly applied, prohibits the administration of such medications. This amendment further addresses other prohibited practices such as the possesssion or use of blood doping agents, the possession or use of a shock wave therapy machine and the possession or use of a blood gas machine. Finally, this amendment addresses testing procedures and the responsibility of trainers and veterinarians to ensure
that prohibited drugs and medications are not administered to horses.

(b) The necessity of the amendment to this administrative regulation: It is critical that the present regulation be amended as soon as possible, certainly before the beginning of the next thoroughbred race meeting in Kentucky. As was stated previously, the current regulation prohibits the administration of even those drugs and medications which are universally accepted within the racing industry. The current regulation is completely impractical and unrealistic. As a result of the inadequacy of the existing regulation, the former Kentucky Racing Commission issued an internal policy memorandum that took effect in October 2002. That internal policy was far too lenient and allowed various medications, principally nonsteroidal anti-inflammatory agents, to be administered not less than 4 hours prior to post time. This internal policy has been implemented since October 2002, even though it clearly has no legal effect or enforceability since it circumvents the existing regulation in violation of KRS 13A.130. It is critical that the current administrative regulation be amended as soon as possible. This amendment is effective, thorough, and enforceable. It will result in placing Kentucky at the forefront of thoroughbred racing in this country in terms of regulating drugs, medications, and other substances in thoroughbred racing.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms precisely to the authorizing statutes set out above, which specifically charge the KHRA with the responsibility of promulgating regulations which prohibit the improper administration of drugs or stimulants to horses that are competing in races.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides a comprehensive, far-reaching, and enforceable regulation that will enable the KHRA to monitor and test horses and prevent the improper administration of drugs and medications. The current regulation is not being enforced because it is too stingent and would virtually shut down racing if enforced.

(e) The number and type of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all aspects of the thoroughbred racing industry. Owners, trainers, jockeys, exercise personnel, the betting public, and others who work in and around race tracks and other licensed facilities in Kentucky will be affected by this regulation. (g) 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 most significant impact of this amendment will be a dramatic improvement in the ability of the KHRA to protect the safety and well-being of jockeys who ride thoroughbred horses. This amendment will clearly minimize the likelihood that thoroughbred horses are being engaged in races while improperly and illegally medicated. This amendment will enhance the ability of the KHRA to monitor and regulate the types and amounts of drugs being administered to horses.

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

(a) Initially: It is not anticipated that there will be any additional costs to the state associated with the implementation of this amendment to the regulations.

(b) On a continuing basis: No increase in cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. See above.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: See (7) above.

(9) TIERING. Is tiering applied: No, tiering does not apply to this regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(Amendment)

810 KAR 1:028. Disciplinary measures and penalties.

RELATES TO: KRS 230.215(2), 230.260(1), (3), 230.265(2),
230.290(2), 230.300, 230.320(1), 230.361(1)
STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2),
230.260(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260
authorizes [grants— the commission] the authority to promulgate
necessary and reasonable administrative regulations [regulate
conditions] under which racing shall be conducted in Kentucky.
The function of this administrative regulation is to establish the
disciplinary powers and duties of the stewards and the Authority
[commission].

Section 1. Definitions. (1) "Associated Person" means the
spouse of an inactive person, or a companion, family member,
employer, employee, agent, partner, partner corporation, or
other entity whose relationship, whether financial or otherwise, with
an inactive person would give the appearance that such other
person is to care for or train a horse, or perform veterinarian services
on a horse for the benefit, credit, reputation, or satisfaction of the
inactive person.

(2) "Class A drug" means a drug classified as a Class A drug in
the schedule.

(3) "Class B drug" means a drug classified as a Class B drug in
the schedule.

(4) "Class C drug" means a drug classified as a Class C drug in
the schedule.

(5) "Companion" means a person who cohabits with or shares
living accommodations with an inactive person.

(6) "Inactive person" means a trainer or veterinarian who has
his or her license suspended or revoked for a violation of the ad
ministrative regulations pertaining to:
(a) Class A drugs;
(b) A third violation of the administrative regulations pertaining to
Class B drugs;
(c) TC02 under Section 5(c) or (d) shock wave, or blood gas
machines under Section 5(c).

(7) "Schedule" means the Kentucky Horse Racing Authority
Uniform Drug and Medication Classification Schedule. [Definition.
"Steward" means a racing steward or racing judge.]

Section 2. General Provisions. (1) An alleged violation involving
a Class A drug, medication, or substance shall be adjudicated by
the stewards in consultation with the Authority.

(2) A drug, medication, or substance found to be present in a
prerace or post-race sample that is not classified in the schedule
shall be presumed to be a Class A drug and shall be subject to
Class A drug penalties, unless satisfactorily demonstrated that the
drug, medication, or substance does not fall within the definition of
a Class A drug.

(3) Stewards and the Authority shall consider any mitigating or
aggravating circumstances properly presented when assessing
penalties pursuant to this administrative regulation.

(4) The Authority has the authority to suspend or revoke the
Authority-issued license of an owner, trainer, veterinarian, or other
licensee.

(5) A licensee whose license has been suspended or revoked
is not a horse that has been suspended, shall be denied access to
locations under the jurisdiction of the Authority during the term of
the suspension or revocation.

(6) A suspension or revocation shall be calculated in calendar
or Kentucky racing days at the discretion of the stewards or the
Authority.

(7) A person assessed a penalty pursuant to this administrative
regulation shall have his or her name and the terms of his or her
penalty placed on the official Web site of the Authority. If an appeal
is pending, that fact shall be so noted.

(8) To protect the racing public and ensure the integrity of rac-
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In the Commonwealth, a trainer whose penalty for a Class A violation or for a Class B third offense violation under this administrative regulation has not been fully and finally adjudicated may, in the discretion of the stewards, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of such horse, and the cost shall be borne by the trainer.

(9) A veterinarian who administers, or is a party to, or facilitates the administration of, or is found to be responsible for the administration of a Class A drug, medication, or prohibited substance to a horse, in violation of this administrative regulation, or who has engaged in prohibited practices under this administrative regulation, shall be reported to the appropriate professional state licensing board.

(10) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar nor be considered jeopardy regarding prosecution for any act which violates the criminal statutes of Kentucky.

Section 3. Prior Offenses. (1) Prior offenses occurring in Kentucky shall be considered by the stewards and by the Authority in assessing penalties. Prior offenses occurring in other racing jurisdictions may be considered by the stewards and the Authority in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender’s prior record containing violations that were committed both inside and outside of Kentucky.

(2) Offenses occurring before the effective date of this administrative regulation shall not be considered.

(3) Prior offenses involving a Class C drug, medication, or substance may be considered as a prior offense, if the act that constituted the offense was committed after the effective date of this administrative regulation and within one (1) year of the offense for which the person stands charged.

(4) Prior offenses involving a Class A or B drug, medication, or substance may be considered as a prior offense, if the act that constituted the offense was committed after the effective date of this administrative regulation.

(5) Prior offenses shall not be considered for purposes of enhancing a penalty if the drug, medication, or substance that was the subject of the prior offense was of a lower class, pursuant to the schedule, than the drug, medication, or substance that is the subject of the offense for which the person is charged.

Section 4. Penalties for Class A, B, and C Drugs, Medications, and Substances. (1) Class A drug, medication, or substance. A person who administers, or is a party to, or responsible for administering a Class A drug, medication, or substance to a horse, in violation of this administrative regulation shall be subject to the following penalties:

(a) For a first offense: 1. A fine of $5,000 to $10,000;
2. A suspension or revocation of licensing privileges from zero to three (3) years. Section 7 of this administrative regulation shall apply to the suspension or revocation; and
3. Forfeiture of purse money won.
(b) For a second offense: 1. A fine of $10,000 to $20,000;
2. A suspension or revocation of licensing privileges from three (3) to five (5) years. Section 7 of this administrative regulation shall apply to the suspension or revocation; and
3. Forfeiture of purse money won.
(c) For a third offense: 1. A fine of $20,000 to $50,000;
2. A suspension or revocation of licensing privileges for not less than five (5) years. A revocation of licensing privileges may be permanent. Section 7 of this administrative regulation shall apply to the suspension or revocation; and
3. Forfeiture of purse money won.
(d) For a fourth offense: A horse owned a Class A drug, medication, or substance, in violation of this administrative regulation, shall be subject to suspension from racing in Kentucky as follows:
1. For a first offense - a suspension from zero to sixty (60) days;
2. For a second offense - a suspension from sixty (60) to 180 days;
3. For a third offense - a suspension from 180 to 240 days.
(2) Class B drug, medication, or substance. A person who administers, or is a party to, or is responsible for administering a Class B drug, medication, or substance to a horse, in violation of this administrative regulation shall be subject to the following penalties:

(a) For a first offense:
1. A fine of $500 to $1,000;
2. A suspension of licensing privileges from zero to three (3) months; and
3. Forfeiture of purse money won.
(b) For a second offense:
1. A fine of $1,000 to $2,500;
2. A suspension of licensing privileges from three (3) to six (6) months; and
3. Forfeiture of purse money won.
(c) For a third offense:
1. A fine of $2,500 to $5,000;
2. A suspension of licensing privileges from six (6) months to one (1) year. Section 7 of this administrative regulation shall apply to the suspension or revocation; and
3. Forfeiture of purse money won.
(d) Suspension of the owner’s horse. A horse administered a Class B drug, medication, or substance in violation of this administrative regulation shall be subject to a suspension from racing in Kentucky as follows:
1. For a first offense - no suspension;
2. For a second offense - a suspension from zero to sixty (60) days;
3. For a third offense - a suspension from sixty (60) to 180 days.
(e) Class C drug, medication, or substance. A person who administers, or is a party to, or is responsible for administering a Class C drug, medication, or substance to a horse, in violation of this administrative regulation shall be subject to the following penalties:

(a) For a first offense any or all of the following penalties shall apply:
1. A fine of $250 to $500;
2. A suspension of licensing privileges from zero to ten (10) days;
3. Forfeiture of purse money won.
(b) For a second offense each of the following penalties shall apply:
1. A fine of $500 to $1,000;
2. A suspension of licensing privileges from ten (10) to thirty (30) days; and
3. Forfeiture of purse money won.
(c) For a third offense each of the following penalties shall apply:
1. A fine of $1,000 to $2,500;
2. A suspension of licensing privileges from thirty (30) to sixty (60) days; and
3. Forfeiture of purse money won.

Section 5. TCO2 Penalties. A person who violates or causes the violation of 810 KAR 1:018. Section 16(6), (7), or (8) shall be subject to the following penalties:

(a) For a first offense:
1. A fine of $1,000 to $1,500;
2. A suspension of licensing privileges from zero to three (3) months; and
3. Forfeiture of purse money won.
(b) For a second offense:
1. A fine of $1,500 to $3,000;
2. A suspension of licensing privileges from three (3) months to six (6) months; and
3. Forfeiture of purse money won.
(c) For a third offense:
1. A fine of $3,000 to $5,000;
2. A suspension or revocation of licensing privileges from six (6) months to one (1) year; and
3. Forfeiture of the licensee’s real property.
(d) Subsequent offenses:
1. A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation; and
2. Forfeiture of the licensee’s real property.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes a violation of 810 KAR 1:018, Section 16(5)(a), (2), (3), or (10) regarding a shock wave machine or blood gas machine shall be subject to the following penalties:
(a) For a first offense:
1. A fine of $1,000 to $5,000; and
2. A suspension of licensing privileges from one (1) to three (3) months.
(b) For a second offense:
1. A fine of $5,000 to $10,000; and
2. A suspension of licensing privileges from three (3) to six (6) months.
(c) For a third offense:
1. A fine of $10,000 to $20,000; and
2. A suspension or revocation of licensing privileges from six (6) months to one (1) year.

Section 7. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person.
(2) An associated person of an inactive person shall:
(a) Assume the inactive person’s responsibilities at a location under the inactive person’s supervision;
(b) Complete an entry form for a race to be held in the Commonwealth of Kentucky on behalf of or for the inactive person or an owner, or other person for whom the inactive person has worked; or
(c) Pay or advance an entry fee for a race to be held in the Commonwealth of Kentucky on behalf of or for the inactive person or an owner, or other person for whom the inactive person has worked.
(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall:
(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;
(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;
(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person;
(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the Authority;
(e) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:
1. Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in the Commonwealth of Kentucky;
2. Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;
3. Not use the services, directly or indirectly, of current employees of the inactive person; and
4. Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for such expenses shall be retained for not less than six (6) months after the date of remittance of the license fee of the inactive person or the expiration of the suspension of the inactive person’s license.

Section 8. Other Disciplinary Measures. (1) A person who violates 810 KAR 1:018, Section 5(1) for exceeding the concentration levels allowed for permitted Non-Steroidal Anti-Inflammatory Drugs ("NSAIDs") shall be subject to the penalty provisions set forth for Class C drugs.
(2) A person who violates 810 KAR 1:018, Section 5(2) for administering more than one (1) permissible NSAID shall be subject to the penalty provisions set forth for Class B drugs.
(3) A person who violates 810 KAR 1:018, Section 5(3) shall be subject to the penalty provisions for Class A drugs.
(4) A person who violates 810 KAR 1:018, Section 5(4) shall be subject to the penalty provisions for Class A drugs.

Section 9. [2.] Disciplinary Measures by Stewards. Upon the finding of a violation of these administrative regulations, an attempt to violate, or if otherwise provided for in this administrative regulation (on association grounds (during or outside of a meeting), the stewards may impose one (1) or more of the following penalties:
(1) Declare a horse or a licensed person ineligible to race (for racing) or disqualified a horse or a licensed person in a race:
(a) In a race any thoroughbred-as provided for under 810 KAR 1:012 and 1:016; or
(b) Any licensed person in violation of 810 KAR 1:026, Section 6.01 or violation of any other administrative regulation contained in Chapter 180 or 811 of the Kentucky Administrative Regulations;
(2) Suspend or revoke a person’s licensing privileges the license of a person involved in a violation of an administrative regulation for a period of time not more than five (5) years, or greater than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation;
(3) Levy a fine against the license in an amount not to exceed $50,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation; or
(4) Cause a [any] person, licensed or unlicensed, found to have interfered with, or contributed to toward the interference of, the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing, to be excluded from association grounds or from a [any] portion of association ground(s) or
(4) In the case of a license suspension, the stewards may fix in the alternative a forfeiture not to exceed $5,000, which sum the licensees may, if so choose, pay to the commission in lieu of the imposed license suspension

Section 10. [3.] Disciplinary Measures by the Authority [Commission]. (1) Upon the finding of a violation of this [these] administrative regulations, [regulations] or an attempt to violate, if not otherwise provided for in this administrative regulation (on association grounds (during or outside of a meeting)), the Authority [commission] may impose one (1) or more of the following penalties:
(a) [4] Declare a horse or a licensed person ineligible to race (for racing) or disqualified a horse or a licensed person in a race (any thoroughbred or any licensed person found to be in violation of 810 KAR 1:026, Section 6.01 or violation of any other administrative regulation contained in Chapter 180 or 811 of the Kentucky Administrative Regulations);
(b) Suspend (or) [deny, suspend,] revoke a person’s licensing privileges the license of a person involved in a violation of an administrative regulation for a period of time not more than five (5) years, or greater than five (5) years;
as may be deemed appropriate by the Authority [commission] in keeping with the seriousness of the violation;

(c) Levy a fine against a licensee in an amount not to exceed $50,000 as may be deemed appropriate by the Authority in keeping with the seriousness of the violation; or

(d) [§8] Eject or exclude persons from association grounds for a [any] length of time the Authority [commission] may deem [is] necessary;

(2) [§4] Upon appeal or [and] hearing de novo of a matter determined by the stewards, reverse or revise the steward's ruling in whole or in part [all-respectfully]; except as to findings of fact by the stewards regarding matters that occurred during or [are] incident to the running of a race and as to the extent of disqualification fixed by the stewards for a foul in a race; or

(5) In lieu of a license suspension or revocation, the commission may assess a forfeiture in any amount, which the licensee may pay to the commission in lieu of the imposed license suspension or revocation. The forfeitures paid to the commission in lieu of shall not accrue to the personal benefit of any commissioner or steward.

Section 11. Material Incorporated by Reference. (1) "The Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule (605)" is hereby incorporated by reference.

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

Section 12. The requirements, implementation, and enforcement of this emergency administrative regulation shall be in effect on September 7, 2005.

LAJUANA S. WILCHER, Secretary
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 15, 2005
FILED WITH LRC: August 19, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2005 at 9 a.m. at the South Park Theatre at the Visitor’s Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing at least five working days prior to the date of the hearing. If you wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written comments of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jim Gallagher, Executive Director, Kentucky Horse Racing Authority, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, phone (859) 246-2040, fax (859) 246-2030.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jim Gallagher

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation sets out the disciplinary measures that can be imposed on persons who violate any of the regulations contained in Title 180, the portion of the Kentucky regulations pertaining to thoroughbreds. The regulation specifies those measures that can be taken by both the stewards and by the full Kentucky Horse Racing Authority ("KHRA").

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order that the KHRA have the ability and the means to enforce its regulations. If the KHRA's rules and regulations are to have any viability and effectiveness, there must be sanctions in the event of violations and the agency must have the means and the ability to enforce and apply those sanctions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the KHRA "forceful control of horse racing... with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the commonwealth." KRS 230.240(2) authorizes the KHRA to "promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." KRS 230.260 (3) provides the KHRA with "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted..." In view of the foregoing statutes that clearly charge the KHRA with the responsibility of policing the racing industry in Kentucky and provide full and plenary power to the Authority to regulate the industry, this administrative regulation fully conforms to the content of the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the potential penalties that can be imposed by both the stewards and the KHRA for violations of the thoroughbred regulations. This emergency amendment to the existing regulation will greatly enhance the ability of the KHRA to carry out its statutory duties to prohibit illegal and illicit drugs and medications by enabling the KHRA and the stewards to impose greater and more severe sanctions than they currently are able to do. This emergency amendment will unquestionably improve the ability of the KHRA to prohibit the presence of impermissible drugs and medications in thoroughbreds.

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

(f) How the amendment will change the existing regulation: As was stated, the current regulation allows the stewards to suspend a license for 5 days to 5 years or, in lieu of suspension, to fine the violator up to $5,000. The KHRA is authorized to suspend or revoke for the same length of time or to fine the licensee in any amount in lieu thereof. This amendment will permit the stewards to fine up to $5,000 and suspend a licensee under certain circumstances. The KHRA will be permitted to up to 10 years to suspend or revoke a license under certain circumstances. Additionally, this amendment specifically sets out the penalties for many of the violations of 810 KAR 1.018, the drug and medication regulation.

(2) The necessity of the amendment to this administrative regulation: This amendment is necessary in order that the KHRA have the ability to effectively enforce its drug and medication regulations. Penalties for violations of the drug regulation need be specified and toughened, and in order for that to be accomplished this regulation must be amended.

(c) How the amendment conforms to the content of the authorizing statutes: As explained in (1)(c) above, this amendment will enable the KHRA to more effectively carry out its statutory duties to police the racing industry and prohibit horses from carrying illegal or unauthorized drugs or medications in their bodies while racing. The KHRA is given plenary power to regulate the racing industry and is charged with maintaining the integrity of that industry. Without the authority to sanction violators and impose effective penalties, the KHRA would have no leverage to deter and punish violators; therefore, this amendment clearly conforms to the content of the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will enable the KHRA to punish violators of its drug and medication regulations by imposing tough and effective penalties up to and including permanent license revocation. By having that authority, KHRA will clearly be able to more effectively administer the statutes which charge it with the responsibility of policing the racing industry and maintaining its integrity.

(3) List the type and number of individuals, businesses, organi-
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Administrative or state and local governments affected by this administrative regulation: This regulation affects all participants in the racing industry. All licensed personnel are subject to the penalty provisions contained in this regulation.

(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: The amendment to the regulation will mean that all persons licensed by the KHRA will be subject to stricter penalties for violations of 810 KAR 1:018 and, potentially, for other violations of the thoroughbred regulations. As was stated, the existing regulation allows suspensions and revocations of fines in lieu thereof. The amended regulation will allow the stewards and the KHRA to suspend, revoke and fine.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially, it is not anticipated that there will be any additional costs associated with the implementation of this amendment to the regulation.
(b) On a continuing basis: No increase in cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: See (5) above.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding anticipated.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: See (7) above.
(f) Tiering: Is tiering applied. No, tiering does not apply to this regulation.

Environmental and Public Protection Cabinet
Department of Public Protection
Office of Charitable Gaming (Amendment)

820 KAR 1:001. Definitions for 820 KAR Chapter 1.

RELATES TO: KRS 238.500-238.595
STATUTORY AUTHORITY: KRS 238.515(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the office [department] of Charitable Gaming to promulgate administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1.

Section 1. Definitions. (1) "Account number" means the unique identification number, if any, assigned [provided] by a card-mining device system to a customer that uses a card-mining device to play bingo. (2) "Advertising" means all handouts, flyers, radio, television, advertising signs, billboards, and other media used to promote any event or activity required to be licensed under this act and any printing costs associated with them. (3) "Bet block" means an area which indicates the dollar amount of the wager. (4) "Bingo ball" is a ball imprinted with numbers and letters which is used in the selection process of a bingo game. (5) "Bingo machine" is a type of selection device with a receptacle for the unselected bingo balls, a blower for selecting the balls, and a ball tray that contains seventy-five (75) holes in which to place the ball once it is called. (6) "Bingo paper pack" means a group of bingo paper sheets that are manufactured, collated, and sold by the manufacturer as a unit. (7) "Bingo paper package" means a group of bingo paper sheets or packs that are assembled together by an organization for sale at a gaming occasion. (8) "Bingo paper pad" is a group of single sheets of the same color or border which are sold separately but assembled together by the manufacturer or distributor for internal control purposes. (9) "Bingo session" is a set period of time stated on the license during which bingo is played at a gaming occasion. (10) "Bookkeeping" means compiling the quarterly report, the federal excise tax form, and the federal gaming forms, and shall not include handling charitable gaming funds, preparing gaming occasion records, or ordering supplies. (11) "Draw open bingo" is a bingo game in which the numbers on the face are hidden until after purchase. (12) "Called bingo number" means the number located on a bingo ball that has been selected by the selector device and verbally announced by the caller. The number called shall be displayed on the scoreboard or other display device and placed in a ball tray or other device. (13) "Cash" means currency, coinage, or a negotiable instrument. (14) "Cash short" occurs when the total amount of money actually received from the sale of gaming supplies at a gaming occasion is less than the amount of money due from the sale of that quantity of gaming supplies. (15) "Cash over" occurs when the total amount of money actually received from the sale of gaming supplies at a gaming occasion is more than the amount of money due from the sale of that quantity of gaming supplies. (16) "Chief executive officer" means the person who has legal authority to act on behalf of the organization, distributor, manufacturer, or facility. (17) "Chief financial officer" means the person responsible for overseeing the financial activities of the organization, distributor, manufacturer, or facility. The chief financial officer shall be the custodian of the gaming occasion records and shall be responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the office. (18) "Coin board" is a pulltab game in which the prize consists of coins or coins and other prizes. (19) [(3)] "Card" or "face" means a card or paper or an electronic representation containing: (a) Five (5) rows of five (5) squares with numbers or symbols; (b) A free-center space; (c) The letters "B", "I", "N", "G", "O", "P" printed in order over the five (5) columns; and (d) A unique permit number identifying each card or face. (20) "Cash" means currency, coinage, or a negotiable instrument. (21) [(3)] "Conditioning" means a restatement of. (22) How many numbers or combinations of numbers are being selected by the players; (b) The way in which the numbers are being wagered; and (c) The corresponding dollar amount wagered. (23) "Continuation game" means a multipart bingo game in which more than one (1) game with more than one (1) pattern may be played on one (1) bingo paper sheet. (24) [(3)] "Covered" means daubed, daubed or smeared with indelible ink if using a disposable paper bingo card, or marked electronically if using a card-mining device. (25) "Cumulative, carry over, or progressive pulltab game" is a pulltab game designed by the manufacturer to include a jackpot prize that is carried over from deal to deal until it is won. (26) [(3)] "Custom-card-mining device" means a card-mining device that uses proprietary software and hardware. (a) That is either manufactured or customized by the manufacturer; or (b) Of which the manufacturer controls its production. (27) "Deal" means each separate game or series of pulltabs [chain-game-fictures] with the same serial number on which the profit is calculated and all winners awarded. A deal may be composed of multiple packages. (28) [(3)] "Debit" means an item; (a) Upon which bingo letters and numbers are imprinted; and (b) Used in the number selection process. (29) [(16)] "Digital signature" means a method [method] by which data, as in a software application, is expressed in a calculated number which is used to verify the accuracy of the data or a copy of the data. (30) [(16)] "Disposable paper bingo face[card]" means a non-reusable [paper] bingo face assembled in a single sheet, multiple
face sheet, pad, or pack form (card):
(a) Bearing preprinted numbers; and
(b) Assembled in:
1. Multiple card sheet;
2. Single sheet;
3. Pullout;
4. Pullout form.
(22) ([42]) "Draw ticket" means a blank ticket upon which the numbers are marked as they are randomly selected.
(27) ([43]) "EPROM" means Erasable Programmable ROM.
(28) ([44]) "Exception log" means a record documenting a prize payout that has not been authorized by the computer.
(29) "Event game" means a type of pulltab game that is designed by the manufacturer so that certain prizes are determined by the draw of a bingo ball or by some other approved specified event. The approved specified event must consist of a method of randomly selected numbers or symbols that correspond to the numbers or symbols printed on a ticket. It can be played with or without a seal card.
(30) "Face" means a paper or an electronic representation containing:
(a) Five (5) rows of five (5) squares with numbers or symbols;
(b) A free center space;
(c) The letters "B", "I", "N", "G", "O" printed in order over the five (5) columns; and
(d) A unique perm number identifying each face.
(31) "Fixed base card-minding device" means a computer system, not necessarily manufactured by a licensed manufacturer, which has been loaded with proprietary software by a licensed manufacturer to enable it to function as a card-minding device.
(32) ([46]) "Flair" is a paper included with a deal of pulltabs that identifies the game and payout structure means a piece of paper, cardboard or similar material that bears printed information relating to the:
(a) Number of prizes to be awarded; and
(b) Specific prize amounts in a particular deal-of-chance game ticket.
(33) "Flashboard or display board" is a board that displays the bingo numbers called.
(34) "Form number" is a manufacturer's alphanumeric number which identifies a pulltab payout structure.
(35) "Gambling" means staking or risking something of value on the outcome of a contest, game, gaming scheme, or gaming device which is based upon an element of chance. In accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome. A contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill shall not be considered to be gambling.
(36) "Game program" means a written list of all games to be played and prize amounts to be paid for each game during a gaming occasion. If the prizes are based on attendance the amount of the prize and the attendance required shall be set forth in the program.
(37) "Gaming occasion" means an event at which charitable gaming takes place, such as a bingo session, a charitable fundraising event, a special limited charity fundraising event, a sale of pulltabs, or a sale of bingo tickets.
(38) "Gross receipts" means money received from the sale of raffle tickets, bingo cards or faces, card-minding devices, pulltabs, charity fundraising event games, special limited charity fundraising event games, bad check collections, and reasonable check collection fees minus bad check checks.
(39) "Handheld card-minding device" means a handheld computing device that is either manufactured or customized by the manufacturer to operate as a card-minding device.
(40) "Hard card" is a reusable card bearing a bingo face or faces.
(41) ([46]) "Inside ticket" means a blank Keno ticket:
(a) Constructed with eighty (80) blocks numbered one (1) through eighty (80); and
(b) Contains a bet block.
(42) Jackpot prize in a progressive pulltab game means a prize in addition to the instant or seal card prizes which is carried over from deal to deal until it is won in a cumulative, carry over, or progressive pulltab game.
(43) "Jar ticket" is a type of pulltab game ticket which is folded or glued and may be stapled.
(44) ([47]) "Keno" means a numbers game in which:
(a) A participant chooses from one (1) to ten (10) numbers from a pool of eighty (80) numbers; and
(b) The winner and the prize is determined by correctly matching the participant's numbers to the twenty (20) numbers generated in the game.
(45) ([48]) "Keno equipment" means:
(a) An electronic selection device;
(b) A random number generator;
(c) A computerized Keno system; or
(d) An integrated system of computer hardware and software that:
1. Generates a player ticket;
2. Records a game outcome;
3. Verifies a winning ticket;
4. Produces a management report; or
5. Performs other internal audit controls of a Keno operation.
(46) ([49]) "Keno manager" means the person in charge of the operation of the Keno game.
(47) "Last sale pulltab game" means a game designed by the manufacturer in which a prize is awarded to the person who bought the last pulltab in a deal.
(48) "Member of an organization" means a person who regularly engages in the activities of an organization in addition to any involvement with charitable gaming activities. A person who participates only in the charitable gaming related activities of an organization shall not be deemed a member of that organization.
(49) "Mendandise prize" means a noncash prize given away at a charitable gaming event other than a game prize or a door prize.
(50) ([50]) "Model number" means a number designated by the manufacturer that indicates the unique structural design of a handset (e.g., card-minding device or card-minding system component).
(51) "Multipackaged deal" means a pulltab deal in which each package contributes to the prize pool.
(52) ([51]) "Multirace ticket" means a single ticket which allows a player to make the same wager on consecutive games.
(53) "On" means the number of bingo faces on a bingo paper sheet.
(54) ([52]) "Outside ticket" means a computer generated ticket given to the player which reflects certain game and wagering information.
(55) ([53]) "Perm number" means the number sometimes generally located in the center space of a bingo face [card] that identifies the unique pattern of numbers printed on that face [card] or [FA].
(56) "Pickle jar, bonanza ball, and hot ball" are games played in conjunction with other bingo games in which a bingo ball is selected by the selection device prior to the start of certain bingo games or all bingo games. If the selected bingo ball is called, and because of that selected ball being called, a patron wins the bingo game being played, then the patron is awarded the amount of money associated with the pickle jar, bonanza ball, or hot ball.
(57) "Player pick ball" means that the patron picks the numbers which constitute a bingo on his or her face or faces and a machine prints those numbers on the bingo face(s) at the gaming occasion before the game is played.
(58) ([54]) "Player tracking software" means computer software installed [that may be loaded on a] [the] card-minding device system or other point of sale system that is used to identify or track certain characteristics of bingo players, including personal data and purchasing habits.
(59) "Printing" means the printing or copying of raffle tickets, gaming occasion programs, house rules, and vouchers.
(60) "Progressive bingo" means a bingo game in which the value of the prize is carried forward to the next bingo occasion if no player wins at that session.
(61) ([55]) "PROM" means programmable ROM.
(62) "Promotional" means any item available at no charge to all participants at an event.
"Proprietary software" means custom computer software developed by the manufacturer that is a primary component of the card-minding device system and is required for a card-minding device to be used in a game of bingo.

"Pulltab" is a charity game ticket.

"Purchased prize" means any merchandise prize that was purchased and not donated.

"Quick pick" means any number selection made for the player by a computer.

"Quarter" means a three (3) month segment starting in January and ending in December of a calendar year.

"RAM" or "random access memory" means the electronic memory that a computer uses to store information.

"Random number generator" means a device:

(a) For generating number values that exhibit characteristics of randomness; and

(b) Composed of:

1. Computer hardware;

2. Computer software; or

3. A combination of computer hardware and software.

"Refrage" means to manually recalculate the prize payout of a winning ticket according to the printed pay schedule.

"ROM" or "read only memory" is the means:

(a) Electronic component used for storage of nonvolatile information in Keno equipment that provides instructions needed by the computer to begin its operations each time it is turned on. It can be either:

1. "PROM" or [and]

2. "EPROM".

"Seed card game with a cumulative or carryover-prize" means a type of slot game ticket utilizing a seed card in which:

(a) The game manufacturer has established a prize pool composed of specifically dedicated prize amounts originating from the play of a deal or deals of a particular game; and

(b) The specifically dedicated prize amounts accumulate or carry over to a subsequently played deal or deals of the same game and are awarded in conjunction with the play of those deals.

"Seed card" is a card included with a deal of pulltabs that is used to determine winners.

"Secondary component means an additional software or hardware component that is [component, provided by the manufacturer, that:

(a) Are part of or is [are] connected to a card-minding device system and [that] do not affect the conduct of the game of bingo; it is provided by the manufacturer and/or

(b) may include:

1. computer screen backgrounds;

2. battery charge-up software routines;

3. monitors;

4. keyboards;

5. pointer devices;

6. mice;

7. printers;

8. printer software drivers; and

9. charging racks.

"Security" means a person or persons whose sole duty is to promote and provide peace, order, and safety at a charitable gaming event and may include controlling the parking lot and accompanying the organization's personnel to the bank or night depository with charitable gaming receipts. It does not include security or alarm systems, or special lighting for the building or parking lot.

"Selected" means a bingo number that has been obtained by the selection device and is ready to be called next by the bingo caller.

"Selection device" means a device that:

(a) May be operated:

1. Manually; or

2. Automatically; and

(b) Is used to randomly select bingo numbers.

"Selection pool" means the bingo numbers in a selection device that have not been selected.

"Serial number" means a number assigned by the manufacturer to track the individual product (that is:

(a) For a paper card or face, printed by the manufacturer on each card in a set and is unique to the set; and

(b) For a card-minding device, the unique identification number assigned by a manufacturer to a specific, custom card-minding device or other component of a card-minding device system.

"Series" is a distinguishable number of unique bingo faces.

"Series number" means the number of unique [cards or faces contained in a series] [set].

"Set" is a case or cases of paper that contain one (1) of each face in a series [means a specific group of paper cards from the same production line that:

(a) Are the same:

1. Color; and

2. Border pattern;

(b) Are imprinted with the same serial number and

(c) May include more than one (1) series of:

1. Cards; or

2. Face.

"Site system" means computer hardware, software, and peripheral equipment that:

(a) Is located at the bingo premises;

(b) Is operated by the charitable organization;

(c) Interfaces with, connects with, controls or defines the operational parameters of card-minding devices; and

(d) May include the following components:

1. Point of sale station;

2. A caller verification system;

3. Required printers;

4. Dial-up modem;

5. Proprietary executable software;

6. Report generation software; and

7. An accounting system or database.

"Standard card-minding device" means a card-minding device that uses proprietary software which is hardware independent other than the specification of minimum system requirements.

"Terminal number" means the unique identification number, if any, assigned by a manufacturer to a specific standard card-minding device.

"Transaction log" means a record of the same information printed on each outside ticket at that is:

(a) Retained in the computer's memory; or

(b) Printed out by the computer.

"Twenty-four (24) hour period" means a twenty-four (24) hour period of time commencing at 12:01 a.m. and ending at twelve (12) midnight.

"Up" means the number of bingo paper sheets contained in a bingo paper pack.

"Utilities expense" means money paid for electric, gas, water, sewer, and trash collection. It may also include any telephone and cable expenses that are incurred by the organization for credit card services and card-minding devices.

"Verification system" means a book of bingo faces [cards] compiled by the manufacturer or an electronic device created by the manufacturer that:

(a) Lists the unique patterns of numbers on each face [card] by pennant number; and

(b) Is used to verify the authenticity of a winning face [card].

"Version number" means a unique number designated by the manufacturer to identify [signify] a specific version of software used on or by the card-minding device system.

"Way ticket" means a single ticket that permits wagering on a combination of groups of numbers in various ways designated by the player.

"Week" means a seven (7) day period beginning on Sunday and ending Saturday.

"Year" is defined by KRS 238.505(25).

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on
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Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:
(a) What this administrative rule does: The amendment to this regulation adds definitions needed for the other amendments to the regulations.
(b) The necessity of this administrative regulation: This amendment is needed to add and clarify terms so that the licensees of the office can better understand the regulations.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(9) requires the office to promulgate regulations which are necessary to carry out the purposes of KRS 238, et seq.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment to this regulation adds definitions needed for the other amendments to the regulations. This amendment is needed to add and clarify terms so that the licensees of the office can better understand the regulations.
(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 adds definitions needed for the other amendments to the regulations.
(b) The necessity of the amendment to this administrative regulation This amendment is needed to add and clarify terms so that the licensees of the office can better understand the regulations.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) requires the office to promulgate regulations which are necessary to carry out the purposes of KRS 238, et seq.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this regulation adds definitions needed for the other amendments to the regulations. This amendment is needed to add and clarify terms so that the licensees of the office can better understand the regulations.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 1200 charitable organizations, 30 charitable gaming manufacturers, 70 charitable gaming facilities, and 90 charitable gaming supply distributors.
(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: This regulation contains the definitions for the other regulations and by itself will not impact the regulated community.
(5) Provide an estimate of how much it will cost to implement this 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: Charitable gaming is funded by the regulated community.
(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 fee increase will be necessary to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.
(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all charitable gaming licensees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(Amendment)

820 KAR 1:010. Temporary license [Licensee].

RELATES TO: KRS 238.525, 238.530, 238.535, 238.555
STATUTORY AUTHORITY: KRS 238.515(9), 238.525(2)(d), 238.530(1), 238.535(d)(2), 238.535(11), 238.557(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.525(2) authorizes the office [department] to issue a temporary license to an applicant who has met the requirements for a license. KRS 238.525, 238.530, 238.535, and 238.555 establish requirements for licensure of qualifying charitable organizations, manufacturers, distributors, and charitable gaming facilities. This administrative regulation establishes the requirements for temporary licensure of a qualifying charitable organization, manufacturer, distributor, or charitable gaming facility.

Section 1. Issuance of [Application for] Temporary License [Licensee]. A temporary license may [shall] be issued by the Office [Department] of Charitable Gaming to a charitable organization, manufacturer, distributor, or charitable gaming facility if the applicant has completed [established compliance with] requirements by completing and supplied complete, accurate, and verifiable information as requested on the appropriate license [Licensee] application form and has complied with all other licensing requirements for an annual license, which shall be:
(1) Form CG-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky;"
(2) Form CG-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment;"
(3) Form CG-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment;"
(4) Form CG-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky;" or
(5) Form CG-Schedule A, "Application for Charity Fundraising Event License or Special Limited Charity Fundraising Event License;"

Section 2. Form of Temporary Licenses. A temporary license issued by the Office [Department] of Charitable Gaming shall clearly state the:
(1) Name of the licensee;
(2) Physical address of the licensee;
(3) Date of issuance of the temporary license;
(4) Expiration date of the temporary license;
(5) Premises or location at which the charitable gaming will be conducted, if the temporary license is for a charitable organization or charitable gaming facility;
(6) Type of temporary license issued (distributor, manufacturer, facility or organization; and)
(7) Address of the Office [Department] of Charitable Gaming;
(8) For charitable organizations, the license shall also include the day(s) and time(s) of session(s) and the type of gaming to be conducted under the license.

Section 3. License [Proceeding] Fee. For each temporary li-
cense issued, the licensee shall pay a twenty-five (25) dollar [(4)] processing fee. The [of twenty-five (25)-dollar shall accompany each application for a temporary license.
(2) The twenty-five (25)-dollar processing fee shall be credited to any balance due on the annual [regular] license fee at the time it is issued. The total temporary license fee charged in a year shall not exceed the annual license fee.

[Section 4- Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form CG-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky" (02/02);
(b) Attachment CG-1A, "Tax Information Authorization (02/02);
(c) Form CG-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment" (02/02);
(d) Form CG-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment" (02/02);
(e) Form CG-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky" (02/02); and
(f) Form CG-Schedule A, "Application for Charity-Fundraising Event License or Special Limited-Charity-Fundraising Event License" (02/02).
(2) Those forms may be inspected, obtained or copied, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection and Regulation Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 27, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Interested individuals in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5529, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets out the requirements for obtaining a temporary license.
(b) The necessity of this administrative regulation: This administrative regulation is needed to clarify and standardize conditions under which a temporary license could be obtained.
(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation replaces an older regulation and provides more clear and concise requirements for a licensee to obtain a temporary license.
(d) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will provide more clarity to the licensees regarding their requirements.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to clarify the requirements that must be met to obtain a temporary license.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(6) requires the office to promulgate regulations which are necessary to carry out the purposes of KRS 238, et seq.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is needed to clarify the requirements of licensees who wish to obtain a temporary license and the conditions under which the office will grant a temporary license.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 1200 charitable organizations, 30 charitable gaming manufacturers, 70 charitable gaming facilities, and 30 charitable gaming supply distributors.
(f) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.
(d) 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 fee increase will be necessary to implement this regulation.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(f) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all licensees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(Amendment)

820 KAR 1:01S. Issuance of annual license for a charitable organization [Permanent licensees].

RELATES TO: KRS 238.51S(3), 238.525, [238.630, 238.535], 238.55S,

[238.66S]

STATUTORY AUTHORITY: KRS 238.515(1), (2), (3), (9), [238.630(1), (2), (4)], 238.535(1), 238.66S(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.525(1) requires the office [department] to issue an annual or biennial [a permanent] license to a qualified applicant and to establish fees not to exceed the amounts established in KRS [238.535, 238.55S, 238.66S]. This administrative regulation establishes the fees and procedures for annual [permanent] license of charitable organizations [manufacturers, distributors, and charitable gaming facilities].

Section 1. Application for License. (1) An organization shall submit a complete, accurate, and verifiable application at least sixty (60) days prior to the expiration of its license or expected date of gaming.

(2) An application shall not be considered complete until all deficiencies are resolved to the satisfaction of the office.

(3) In the event the applicant does not respond to any defi-
ciency request within thirty (30) days, the application shall be deemed withdrawn.

(4) The office may issue a license if the applicant has met the requirements for licensure set forth in KRS 238.555, paid all fees and fines, filed all reports required, filed a financial plan if required, and complied with all terms and conditions of any applicable settlement agreement or probationary terms.

(5) The following persons shall be required to submit a fingerprint card if they reside out-of-state, the chief executive officer, the chief financial officer, all chairpersons, and all persons with signature authority on the charitable gaming account.

(6) If the application is denied, the applicant shall be prohibited from reappplying for a period of one (1) year from the date of denial. Unless complete application was made for temporary licensure under 820-KAR 14:010, applicants for permanent licensure shall submit to the department a complete application of at least sixty (60) days prior to engaging in the conduct to be licensed. The applicant shall submit:

(a) Form CG-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky";
(b) Form CG-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment";
(c) Form CG-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment";
(d) Form CG-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky".

(2) If the applicant satisfactorily meets the requirements for licensure-processed in KRS Chapter 238, the department shall issue a permanent license.

Section 2. Information Required on License. Licenses [A-permanent license] issued by the Office [Department] of Charitable Gaming shall clearly state the:

(1) Name of the licensee;
(2) Physical address of the licensee;
(3) Date of issuance of the license;
(4) Expiration date of the license;
(5) Premises or location at which the charitable gaming will be conducted, if the license is for a charitable organization or a charitable gaming facility;
(6) Type of license issued [organization]; and
(7) Address of the Office [Department] of Charitable Gaming; and;

(8) The license shall also include day(s) and time(s) of session(s), and the type of gaming to be conducted under the license.

Section 3. Fees for Licenses. (1) The department shall collect fees for applications for permanent licenses and for renewal applications.

(2)(a) The annual license fees for each organization license issued shall be as follows:

(a) Charitable organizations upon initial application and [1] Manufacturer — $1,000;
(b) Distributor — $1,000;
(c) Charitable gaming facility which may have up to eighteen sessions per week — $2,500;
(d) Charitable gaming facility which may have no more than eight sessions per week — $1,250;
(e) Charitable gaming organizations [organization] with gross receipts not in excess of $100,000 - $100.

(2)(b) Charitable gaming organization with gross receipts over $100,000, but not in excess of $250,000 - $200.

(2)(c) Charitable gaming organization with gross receipts over $250,000 - $300.

(2)(d) A processing fee of twenty-five (25) dollars shall accompany each application for licensure. The twenty-five (25) dollar processing fee shall be credited to any balance due on the license at the time it is issued.

(3) An annual [A-permanent] license shall not be issued until the annual license fee is paid in full.

(4) The annual license shall be effective for one (1) year from the date of issuance.

(5) A processing fee of twenty-five (25) dollars shall be re-
may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets out the requirements for a charitable organization to obtain a charitable gaming license.
(b) The necessity of this administrative regulation: This administrative regulation is needed so that organizations will know the requirements and procedure to obtain a charitable gaming license.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(1) requires the office to license charitable organizations and KRS 238.515(9) requires the office to promulgate regulations which are necessary to carry out the purposes of KRS 238, et seq.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation is an amendment to a current regulation that sets forth the licensing requirements for all licensees (facility, distributor, and manufacturer). The regulations regarding the licensing of each entity have been separated for more clarity and ease of understanding.
(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 puts the licensing requirements for facilities, distributors, and manufacturers in a different regulation.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation clarifies the requirements for a charitable organization to obtain a charitable gaming license.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) requires the office to promulgate regulations which are necessary to carry out the purposes of KRS 238, et seq.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist the office in the effective administration of the statutes and it will make the licensing requirements easier to understand for all licensees.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 700 charitable organizations.
(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: This regulation clarifies previous requirements and should not impact the regulated community.
(5) Provide an estimate of how much it will cost to implement this 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: Charitable gaming is funded by the regulated community.
(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 fee increase will be necessary to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all charitable organizations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
( Amendment)


RELATES TO: KRS 138.010, 138.170, 238.565
STATUTORY AUTHORITY: KRS 138.010, 138.170, 238.515(9), 238.565(2)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedures to be followed by the Office [Department] of Charitable Gaming in conducting hearings following notification to a licensee of an action to be taken against the licensee.

Section 1. Conduct of Hearings. (1) Except as provided in subsection (2) of this section, the provisions of KRS 138.010 through 138.170 shall govern all hearings conducted pursuant to KRS 238.565.
(2) The deadline for action by the agency head or designee of the secretary [of the cabinet] relating to a recommended order following a hearing shall be governed by KRS 238.565(3).

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 8, 2005
FILED WITH LHC: September 12, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of Intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets forth the person who acts for the agency in administrative hearings.
(b) The necessity of this administrative regulation: This administrative regulation is needed so that the agency can act in administrative hearings.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.565 requires the agency to conduct administrative actions in appropriate circumstances.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is needed so that the office can enforce the statutes and regulations through administrative 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 allows for the change of identity of individual who acts for agency from the secretary of the cabinet to
the agency head or designee of the cabinet secretary.
(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation given the reorganization.
(c) How the amendment conforms to the content of the authorizing statute: It is required so that the agency can enforce the statute and regulations through administrative action.
(d) How the amendment will assist in the effective administration of the statute: It is required so that the agency can enforce the statute and regulations through administrative action.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 1200 charitable organizations, 70 facilities, 30 distributors, and 30 manufacturers.
(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: The groups will not be impacted in any way.
(5) Provide an estimate of how much it will cost to implement this 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: Charitable gaming is funded by the regulated community.
(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 fee increase will be necessary to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all licensees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(Amendment)

820 KAR 1:025. Quarterly reports of a licensed charitable organization.

RELATES TO: KRS 238.550(3), 238.550(5), 238.570(1)
STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550(5), 238.560(3), 238.570(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.550(5) and 238.570(1) require a licensed charitable organization to submit quarterly reports and remit 9% of the gross receipts derived from charitable gaming to the office [department]. This administrative regulation establishes the method and time of filing the quarterly reports and remitting payment of the quarterly fees due.

Section 1. Quarterly Reporting Period Defined. (1) A complete, accurate, legible, and verifiable quarterly report shall be submitted [filed] by each [a] licensed charitable organization along with the appropriate fee on or before the following dates: April 30, July 31, October 31, and January 31 [within thirty (30) days following the close of each calendar-year quarter]. If the due date [30th day following the close of the calendar quarter] is on a Saturday, Sunday or legal holiday, the report shall be due on the first business day thereafter.
(2) A quarterly report shall be considered filed when due if it has been:
(a) Mailed to the office [department] by first class mail, postage prepaid, to the correct address and postmarked by the due date, or
(b) Received in the office [department] by hand-delivery on or before the due date.

Section 2. Quarterly Reports. A quarterly report shall:
(1) Be submitted on the following forms:
(a) Form CG-QR, "Quarterly Activity Report (5/05)" including all attachments.
(b) Attachment A, "Charitable Gaming Account Information";
(c) Attachment B, "Report of All Winnings of Prize with a Fair Market Value of $500 or More";
(d) Attachment C, "Special License Activity Report";
(e) Attachment D, "Summary of Gaming Activity"; and
(f) Attachment E, "Report of Charitable Contributions Made-by Licensee".
(2) Be submitted every quarter that the organization is licensed to game.
(3) Be completed in ink or typed;
(4) Include the original signature and printed name of the chief executive officer [signed-by-an-authorized officer of the licensed charitable organization; and
(5) Include the original signature and printed name of the preparer [if prepared by an individual other than the chief executive officer who signs the report on behalf of the preparer].

Section 3. Fees Due. The fee imposed by KRS 238.570(1) on gross gaming receipts of a licensed charitable organization shall be remitted by check made payable to "Kentucky State Treasurer" at the time the quarterly report is due.

Section 4. Late Fine. (1) If the quarterly fee imposed by KRS 238.570(1) is not remitted when due, a fine of twenty-five (25) dollars per day, not to exceed $260 dollars per quarter, shall be imposed on the licensed charitable organization until the quarterly fee has been received by the department.
(2) The quarterly fee shall be considered remitted when due if:
(a) It has been mailed:
   A. To the department by first class mail;
   B. Postage prepaid; or
   C. To the correct address; and
   2. It has been postmarked by the due date; or
   3. It has been received by hand delivery to the department on or before the due date.
(3) The fine imposed in subsection (1) of this section shall be paid:
(a) Within ten (10) days of receipt of an invoice from the department; and
(b) By check made payable to "Kentucky State Treasurer".

Section 5. Reporting Exemptions. All expenses incurred by a licensee shall be reported on the quarterly report for the quarter in which payment was made (date check written or electronic transfer made) regardless of when the supplies were purchased or the services were rendered [reported by a licensee on Form CG-QR shall be reported for the period in which payment is made regardless of when the goods or services are used].

Section 6. Failure to File. Failure by an organization to file reports required by this administrative regulation, to pay quarterly fees, or to pay fines assessed for failure to timely file reports required by this administrative regulation, shall constitute grounds for revocation or denial of licensure.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Charitable Gaming, Environmental and Public Protection [and Regulation] Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-2639, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH RIC: September 12, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 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 transcript request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the procedure for the filing of the quarterly reports of the licensed charitable organizations.

(b) The necessity of this administrative regulation: This administrative regulation is needed so that the agency can receive the reports in a timely manner.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.550(5) requires that the organizations report quarterly concerning their charitable gaming activity.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is needed so that the agency can enforce the statutes requiring the organizations to report quarterly.

(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 quarterly reports filed by each licensee need to be corrected and changed to contain additional information needed by the office to determine compliance with reporting, retention of records, and use of funds for a charitable purpose.

(b) The necessity of the amendment to the administrative regulation: It is necessary to amend this regulation to both simplify the quarterly report and allow the office to capture more information so that it can monitor the charitable gaming activities of the organizations to determine if they are in compliance.

(c) How the amendment conforms to the content of the authorizing statutes: It is required so that the agency can enforce KRS 238.550(5).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist because it simplifies the quarterly report filing form and allows the agency to capture more information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 700 charitable organizations.

(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. The organizations will be required initially to spend more time inventorying their charitable gaming supplies.

(5) Provide an estimate of how much it will cost to implement this 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: Charitable gaming is funded by the regulated community.

(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 fee increase will be necessary to implement this regulation.

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

(9) TIERING: is tiering applied? Tiering is not applied, because this regulation applies equally to all organizations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(Amendment)

820 KAR 1:02S. Quarterly reports of a licensed charitable gaming facility.

RELATES TO: KRS 238.555(6)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.550(3), 238.555(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.555(6) requires a licensed charitable gaming facility to report to the office [department] at least quarterly concerning its operations. This administrative regulation establishes the method and time of filing the required reports.

Section 1. Quarterly Reporting Period Defined. (1) A complete, accurate, legible, and verifiable quarterly report shall be submitted by a licensed charitable gaming facility on or by the following dates: April 30, July 31, October 31, and January 31 [within thirty (30) days following the close of each calendar year quarter]. If the date [30th day following the close of the calendar quarter] is on a Saturday, Sunday or legal holiday, the report shall be due on the first business day thereafter.

(2) A quarterly report shall be considered submitted when due if it has been:

(a) Mailed to the office [department] by first class mail, postage prepaid, to the correct address and postmarked by the due date, or

(b) Received in the office [department] by hand-delivery on or before the due date.

Section 2. Quarterly Reports. A quarterly report shall:

(1) Be submitted on a Form CG-QACQR;

(2) Include the original signature and printed name of [Be signed by] the chief executive officer of the license holder [and chief financial officers of the license holder]; and

(3) Include the original signature and printed name of the preparer, if prepared by an individual other than the chief executive officer [If prepared by an individual other than the chief executive or financial officer, be signed by the preparer].

Section 3. Late Filing. (1) If the quarterly report required by Section 1 of this administrative regulation is not submitted when due, a fine of twenty-five ($25) dollars per day, not to exceed $250 dollars per quarter, shall be imposed on the licensed charitable gaming facility until the quarterly report has been received by the department.

(2) The quarterly report shall be considered submitted when due:

(a) If it has been mailed:
a. To the department by first-class mail;

b. Postage prepaid; and

c. To the correct address; and

d. It has been postmarked by the due date, or

(b) It has been received by hand-delivery to the department on or before the due date.

(c) The fine imposed in subsection (a) of this section shall be paid

(a) Within ten (10) days of receipt of an invoice from the department; and

(b) By check made payable to “Kentucky State Treasurer.”

Section 2. [4-] Failure by a licensed charitable gaming facility to file reports required by this administrative regulation, or to pay fines assessed for failure to timely file reports required by this administrative regulation, shall constitute grounds for revocation or denial of licensure.


(2) This material may be inspected, copied, or obtained, subject to the applicable copyright law, at the Office [Department] of Charitable Gaming, Environmental and Public Protection [and Regulation] Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the procedure for the filing of the quarterly reports of the licensed charitable gaming facilities.

(b) The necessity of this administrative regulation: This administrative regulation is needed so that the agency can receive the reports in a timely fashion.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.555(6) requires that the facilities report quarterly concerning their charitable gaming operation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is needed so that the office can enforce the statutes concerning the reporting of activities on a quarterly basis.

(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 quarterly reports filed by the facilities need to be simplified, and changed to contain additional information needed by the Office to determine compliance.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation to both simplify the quarterly report and allow the office to capture more information so that it can monitor the operation of the charitable gaming facilities.

(c) How the amendment conforms to the content of the authorizing statutes: It is required so that the agency can enforce KRS 238.555(6).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist because it simplifies the quarterly report reporting form and allows the agency to capture more information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 70 facilities.

(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 chance if it is an amendment: It should not impact the facilities except to make the form easier to understand.

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

(a) Initial: None

(b) On a continuing basis: None

(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.

(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 fee increase will be necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all facilities.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Public Protection
Office of Charitable Gaming
(Amendment)


RELATES TO: KRS 238.530(3), 238.540(6), 238.544(1)(b)

STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.530(5), 238.560(3) [238.545(1)(b)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.545(1)(b) permits licensed charitable organizations to offer card-minding devices, as defined in KRS 238.565(28), for use by bingo players. KRS 238.545(6) requires that a licensed charitable organization obtain a charitable-gaming-supplier-and-equipment-of which card-minding-devices are a type,—only from a licensed distributor. KRS 238.530(5) permits the office [department] to require a licensed distributor to report all [on its activities regarding the furnishing of] charitable gaming supplies and equipment furnished [with] the content and frequency of these reports shall [be] prescribed by administrative regulation. This administrative regulation establishes the method and time of filing for reports [concerning card-minding devices].

Section 1. Quarterly Reports, [concerning card-minding-devices shall be completed in accordance with the following:]

(1) A quarterly report shall be submitted on Form CG-DIS/QR [A licensed distributor shall submit the report required by the administrative regulation on a Form CG-DIS/QR, Distributor's Quarterly Usage Report Regarding Card-Minding Devices;]

(2) The report shall include, as attachments, copies of con-
treaty, lease, or purchase agreements between the licensed distributor and each licensed charitable organization to which card-making devices were furnished during each calendar year quarter;

(2) Include the original signature and printed name of the chief executive officer of the license holder; and

(3) Include the original signature and printed name of the preparer. [The report shall be signed by the chief executive and chief financial officers of the licensed distributor; and

(4) If prepared by an individual other than the chief executive officer [or financial officer], the report shall be signed by the preparer.]

Section 2. Reporting Period Defined. (1) A complete, accurate, legible, and verifiable quarterly report [completed Form CG-DIS(CMD)] shall be submitted by a licensed distributor on or before the following dates: April 30, July 31, October 31, and January 31 [within thirty (30) days following the close of each calendar year quarter]. If the due date [30th day following the close of the calendar quarter] is on a Sunday, Saturday, or legal holiday, the report shall be due on the first business day thereafter.

(2) The report shall be considered submitted when due if it has been:
(a) Mailed to the office [department] by first class mail, postage prepaid, to the correct address and postmarked by the due date; or
(b) Received in the office [department] by hand delivery on or before the due date.

Section 3. Late Fine. (1) If the Form CG-DIS(CMD) required by Section 1 of this administrative regulation is not submitted when due, a fine of two thousand five hundred ($2500) per quarter, not to exceed $250 per quarter, shall be imposed on the licensed distributor until the report has been received by the department.

(2) The report shall be considered submitted when due if:
(a) It has been mailed;
   a. To the department by first class mail;
   b. Postage prepaid and
   c. Postmarked by the due date;

(b) It has been received by hand delivery on or before the due date.

(3) The fine imposed in subsection (1) of this section shall be paid:
(a) Within ten (10) days of receipt of an invoice from the department; and
(b) By check made payable to "Kentucky State Treasurer".

Section 4.1] A licensed distributor’s failure to file the reports required by this administrative regulation, or to pay late fines assessed for failure to timely file reports required by this administrative regulation, shall constitute grounds for revocation or denial of license.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Charitable Gaming, Environmental and Public Protection [and Regulation] Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-8625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets forth the procedure for the filing of the quarterly reports of the licensed charitable gaming distributor.
(b) The necessity of this administrative regulation. This administrative regulation is needed so that the agency can receive the reports in a timely fashion.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.530(5) allows the office to require that a distributor report on its activity.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is needed so that the office can set forth the procedure and form requiring the distributors to report quarterly.

(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 quarterly reports filed by the distributors need to be simplified, and changed to contain additional information needed by the office to determine compliance.
(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation to both simplify the quarterly report and allow the office to capture more information so that it can monitor compliance with the statute and regulations by the distributors and the organization.
(c) How the amendment conforms to the content of the authorizing statutes: It is required so that the agency can enforce KRS 238.530(5).

(3) How the amendment will assist in the effective administration of the statutes: The amendment will assist because it simplifies the quarterly report reporting form and allows the agency to capture more information.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 30 distributors.

(5) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or the change if it is an amendment: It will impact the distributors slightly because it captures more information.

(6) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.

(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 fee increase will be necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because
VOLUME 32, NUMBER 4 – October 1, 2005

ENIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Public Protection
Office of Charitable Gaming
(Amendment)

820 KAR 1:050. Raffle standards.

RELATES TO: KRS 238.545
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.545(3), 238.550(6), 238.555(6) [H];

NECESSITY, FUNCTION, AND CONFORMITY: The Office of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish standards for the construction and distribution of raffle materials and for the conduct of raffles. This administrative regulation establishes standards for the construction and distribution of raffle materials and for the conduct of raffles.

Section 1. Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section and shall be consecutively numbered.
(2) The detachable section of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchasers name, complete address, and telephone number.
(3) The following information shall be printed on each ticket:
(a) The date(s) and time(s) of the drawing(s);
(b) The location(s) of the drawing(s);
(c) The name of the charitable organization conducting the raffle;
(d) The charitable organization's license number or exemption number, if any;
(e) The price of the ticket; and
(f) Each prize to be awarded with a fair market value over $500.
(4) The requirements of subsections (2) and (3) of this section shall be waived if:
(a) The raffle sales are initiated and concluded and all winners are selected within a twenty-four (24) hour period and the total fair market value of all raffle prizes awarded in any twenty-four (24) hour period does not exceed $250;
(b) The raffle sales are initiated and concluded and all winners are selected at a special charitable fundraising event; or
(c) The raffle sales are initiated and concluded and all winners are selected at licensed special limited charitable gaming.

Section 2. Raffle Pmzas. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.
(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed for good cause. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.
(2) No person shall be required to be present at a raffle drawing in order to be eligible for the prize drawing.
(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections of all tickets sold prior to the drawing.
(4) Before drawing, the charitable organization shall place each stub or other detachable section of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.
(5) The organization shall use all reasonable means to contact a winner within thirty (30) days of the drawing.
(6) If an organization is unable to contact a raffle winner after reasonable effort, the organization shall retain the prize.
(7) If a raffle winner does not claim the prize within thirty (30) days after having been contacted, the organization shall retain the prize.

(8) The requirements of subsections (5), (6), and (7) of this section shall be waived, and the organization shall be allowed to draw tickets until a winner is present if:
(a) The raffle sales are initiated and concluded and all winners are selected within a twenty-four (24) hour period, and the total fair market value of all raffle prizes awarded in any twenty-four (24) hour period does not exceed $250; or
(b) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charitable fundraising event; or
(c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charitable fundraising event.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighthom Park Boulevard, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly
(1) Provides a brief summary of:
(a) What this administrative regulation does: This regulation establishes the rules for conducting a raffle.
(b) The necessity of this administrative regulation: This regulation is needed to establish the rules for conducting a raffle.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the office will establish and enforce reasonable standards for the conduct of charitable gaming.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for conducting a raffle.
(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 regulation sets forth the procedure if a winner does not claim the prize or if an organization cannot contact a winner.
(b) The necessity of the amendment to this administrative regulation. The amendment is necessary to provide more clarity to the regulated community.

c) How the amendment conforms to the content of the authorizing statutes: It conforms to the content of the authorizing statute, because it explains how to correctly conduct a raffle and award prizes.

d) How the amendment will assist in the effective administration of the statutes: The amendment will assist, because it makes the requirements easier to understand for the regulated community.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 700 organizations.

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: There should be very little impact from this regulation. The only change is that it clarifies how to handle a prize that cannot be awarded.

5. Provide an estimate of how much it will cost to implement this regulation:

   a) Initially: None

   b) On a continuing basis: None

   c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.

   d) 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 fee increase will be necessary to implement this regulation.

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

   f) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all organizations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Public Protection
Office of Charitable Gaming

(AMENDMENT)

820 KAR 1:060. Tipping prohibited.

RELATES TO: KRS 238.540(4)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.540(4), 238.550(4)
NECESSITY, FUNCTION, AND CONFORMITY: The Office [Department] of Charitable Gaming is authorized by KRS 238.515(2) to establish reasonable standards for the conduct of charitable gaming. Charitable gaming to be conducted and administered only by the charitable organization using volunteer personnel. No person engaged in the conduct and administration of charitable gaming is to receive compensation of any kind. This administrative regulation prohibits tips or other gratuitous conduct.

Section 1. Tipping Prohibited. (1) Tipping or other gratuitous conduct constitutes compensation prohibited by KRS 238.540(4). The charitable organization conducting gaming shall take one (1) or more of the following measures to inform the public that its volunteers are unable to accept tips or other forms of gratuitous conduct:

   a) Post signs in a conspicuous location that volunteers are not permitted to accept tips;

   b) Include a notation in a conspicuous location on an occasion program, if any, that volunteers are not permitted to accept tips; or

   c) Make an announcement immediately prior to the beginning of the charitable gaming session or event that volunteers are not permitted to accept tips.

   (2) Except as provided in subsection (3) of this section, a charitable organization shall not pay remuneration or expenses other than those provided in KRS 238.550(4), or award or otherwise provide any sort of benefits to, or for or on behalf of any person engaged as a volunteer in the conduct of charitable gaming sponsored by the charitable organization.

   (3) A charitable organization shall be permitted to provide volunteer workers the following:

      a) Food or drink of a value not to exceed ten (10) dollars per day [in one (1)-day] to be consumed on the premises where charitable gaming occurs or at any other location with prior written approval by the office [department].

      b) Any article of clothing worn by the volunteers on the premises where charitable gaming occurs which identifies the volunteer worker as a volunteer for the charitable organization; and

      c) Any noncash item not to exceed twenty-five (25) dollars in fair market value given to volunteers upon achievement of predetermined goal in the conduct of a raffle [held in connection with a charity fundraising event or special limited charitable games].

   (4) All expenditures made by charitable organizations for volunteers as allowed under subsection (3) of this section shall be reported on the organization’s quarterly report [Form—CG-QR; Quarterly Activity Report (6900)].

Section 2. Prima Facie Evidence of Compensation. (1) It is prima facie evidence of compensation if a person volunteers at more than four (4) gaming occasions a week excluding charity fundraising events as outlined in 820 KAR 1:060.

   (2) It is prima facie evidence of compensation if a person volunteers at more than four (4) special limited charitable fundraising events per year.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 8, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard need to contact the agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:

   a) What this administrative regulation does: The statute prohibits anyone from receiving compensation from charitable gaming, including tipping. This regulation clarifies what money and items it is permissible to give volunteers without violating the statute.

   b) The necessity of this administrative regulation: This regulation is necessary so that organizations will know what it is allowable to give volunteers without it being considered compensation.

   c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the office will establish and enforce reasonable standards for the conduct of charitable gaming.

   d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes, because it clarifies what conduct is permissible and what is not.
(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 provides that it is presumed that someone is being compensated if they work more than 4 gaming occasions a week.
(b) The necessity of the amendment to this administrative regulation: Some organizations have volunteers that volunteer up to 10 sessions a week. Many of these volunteers do not have day jobs and are undoubtedly being paid to work the game either by the patrons through tips, or by the organization or the facility, all of which are illegal. This will give compliance officers and investigators a tool to end this illegal activity.
(c) How the amendment conforms to the content of the authorizing statute: The amendment conforms to the statute since compensation for volunteering in charitable gaming is prohibited.
(d) How the amendment will assist in the effective administration of the statute: The amendment gives the office a better tool to enforce the requirement that no volunteer be compensated to work charitable gaming.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 700 organizations.
(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: There will be some impact, because organizations will be required to obtain real volunteers and not professional volunteers.
(5) Provide an estimate of how much it will cost to implement this 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: Charitable gaming is funded by the regulations community.
(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 fee increase will be necessary to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all organizations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(Amendment)

820 KAR 1:120. Other allowable expenses.
RELATES TO: KRS 238.536, 236 550(6)
STATUTORY AUTHORITY: KRS 236.515(2), (9), 238.550(6)(j)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 236.550(6)(d) authorizes the Office [Department] of Charitable Gaming to approve charitable gaming expenses determined to be legitimate but which have not already been authorized by statute. This administrative regulation establishes those expenses.

Section 1. Other Allowable Expenses. In addition to those authorized expenses provided for in KRS 238.550(6), each of the following expenses are determined to be legitimate and shall be allowable charitable gaming expenses of a licensed charitable organization:
(1) The following customary and usual banking fees or charges paid to any financial institution in connection with an organization’s charitable gaming account:
(a) Monthly service charges;
(b) Check verification service charges;
(c) Check printing charges;
(d) Charges relating to returned checks; and
(e) Copying charges for bank records;
(2) Customary and usual fees or charges paid to a check verification company incurred in connection with the organization’s charitable gaming activities;
(3) Customary and usual fees or charges incurred with accepting and processing credit card purchases from patrons at the organization’s charitable gaming activities;
(4) Food or clothing provided to volunteers as authorized in 820 KAR 1:1620;
(5) Payments made to the Office [Department] of Charitable Gaming;
(6) Printing costs incurred in connection with an organization’s charitable gaming activities;
(7) Payments for the purchase of prizes to be awarded during the organization’s conduct of charitable gaming; [and]
(8) Promotional items;
(9) Utilities; and
(10) Federal excise taxes levied under 25 U.S.C. 4401 and 4411 and paid by a licensed charitable organization during the calendar year.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency by writing to Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets forth the other allowable charitable gaming expenses that are not listed in the statute.
(b) The necessity of this administrative regulation: This regulation is necessary so that organizations will know what are allowable charitable gaming expenses.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.550(6) lists certain allowable charitable gaming expenses and sets forth that the office will provide the others by administrative regulation.
(2) Provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment adds some expenses that the organizations incur in order to conduct charitable gaming.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow the organizations to spend money on items that are required for it to conduct charita-
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bile gaming.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets forth other allowable expenses.
(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies what are allowable charitable gaming expenses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 700 organizations.

(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: There will be very little impact to the organizations.

(5) Provide an estimate of how much it will cost to implement this 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: Charitable gaming is funded by the regulated community.

(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 fee increase will be necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all organizations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Public Protection
Office of Charitable Gaming
(Amendment)

820 KAR 1:130. Administrative actions.

RELATES TO: KRS 238.515(6), (9), [238.530, 238.565], 238.560(3)(a), 238.566.

STATUTORY AUTHORITY: KRS 238.515(5), (6), (9), 238.560(3).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.560(3) authorizes the Office [Department] of Charitable Gaming to take appropriate disciplinary action against licensees [persons] who do not operate in compliance with KRS Chapter 238 and the administrative regulations promulgated thereunder. KRS 238.560(3) directs the office [department] to promulgate an administrative regulation to classify administrative offenses and describe the recommended penalties and other administrative actions for those offenses. This administrative regulation establishes the required classifications and penalties.

Section 1. Letter of Reprimand. (1) The office [department] may issue a letter of reprimand or a cease and desist order to any license holder for any violation of KRS Chapter 238 or 820 KAR Chapter 1.
(2) The office [department] shall impose this administrative action in accordance with KRS 238.560(3) if the office [department] determines that the action will deter future violations and promote efforts to correct the violation cited.

Section 2. Fines. The office [department] may assess fines against any license holder in accordance with the following schedule. All fines shall be assessed in accordance with KRS 238.560(3).
(1) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relating to charitable gaming recordkeeping and reporting requirements, except for failure to file quarterly reports as required in 820 KAR 1.025, shall be subject to a fine not to exceed $500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during the same year shall be subject to a fine not to exceed $1,000 for each offense.
(2) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relating to the conduct of charitable games, including conducting unauthorized games, participation by unauthorized persons, violations of rules of play for bingo, charity game tickets, raffles, games of chance approved for charity fundraising events, and special limited charitable games, shall be subject to a fine not to exceed $500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during the same year shall be subject to a fine not to exceed $1,000 for each offense.
(3) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relating to manufacture, packaging, and distribution of charitable gaming supplies and equipment shall be subject to a fine not to exceed $500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during the same year shall be subject to a fine not to exceed $1,000 for each offense.
(4) A violation of the provisions of KRS 238.530(10) or 238.555(3) shall be subject to a fine not to exceed $750 for each offense. A second or subsequent violation during the same year shall be subject to a fine not to exceed $1,000 for each offense.
(5) A violation for conducting without a license any activity for which a license is required under KRS Chapter 238 and 820 KAR Chapter 1 shall be subject to a fine not to exceed $1,000 for each offense.
(6) A violation for making false statements in reports or other documents submitted to the office [department], including quarterly reports, license applications or records of charitable gaming sessions and events, shall be subject to a fine not to exceed $1,000 for each offense.
(7) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relating to diversion of net receipts from authorized charitable purposes or charitable purposes, unlawful concentration on an individual involved in the conduct of charitable gaming, or any other inurement of net receipts to the private benefit or financial gain of an individual or person, shall be subject to a fine not to exceed $1,000 for each offense.
(8) Any other violation of KRS Chapter 238 or 820 KAR Chapter 1 for which a fine is not established in this section shall be subject to a fine not to exceed $1,000 for each offense.

Section 3. Probation. The office [department] may impose upon any license holder a term of probation for any violation of KRS Chapter 238 or 820 KAR Chapter 1. The office [department] may impose this administrative action, in accordance with KRS 238.560(3), if it determines that office [department] oversight and monitoring of the license holder's activities will promote efforts to correct the cited violation and deter future violations.

Section 4. Revocation, Suspension, and Denial. The office [department] may revoke, suspend or deny a license or application for license for any violation of KRS Chapter 238 or 820 KAR Chapter 1 under the following circumstances:
(1) The office [department] shall revoke, suspend or deny a license if:
(a) An applicant or license holder or individual associated with the applicant or license holder in a capacity listed in KRS 238.525(3) has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, violation of KRS 238.995, or any two (2) misdemeanor crimes in federal court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B during the term of licensure;
(b) A license holder fails to file any reports required pursuant to KRS Chapter 238 or 820 KAR Chapter 1;
(c) A license holder, upon notice of delinquency, fails to remit to the office [department] the charitable gaming fee required pursuant to KRS 238.570(1); and
(d) With respect to license renewal applications, a license holder fails to fulfill any requirement, qualification or eligibility restriction for licensure set forth in KRS Chapter 238 or 820 KAR Chapter 1.
(2) The office [department] may revoke, suspend or deny the license or application of a charitable organization, a manufacturer, a distributor or a facility for violations of KRS Chapter 238 or 820 KAR Chapter 1 if the nature, frequency and severity of the offenses charged, and the license holder's or applicant's history of previous violations, demonstrate an unwillingness or inability to operate in
Section 5. Notice of Violation. The office may [department shall] issue a written notice of violation to a license holder determined to have violated provisions of KRS Chapter 238 or 820 KAR Chapter 1. This notice shall be provided on a Form CG-NOV, Notice of Violation(s). Any Notices of Violation issued to a license holder shall be considered by the office [department in evaluating the license holder’s history of previous violation(s) [violation]. A Notice of Violation shall state the provisions alleged to have been violated and shall notify the license holder that the office [department] may take administrative action against the license holder as a result of the violation(s) [violation(s)].

Section 6. Complaint Procedure. A person shall submit a completed Office [Department of Charitable Gaming Complaint Form to initiate an investigation of an alleged violation.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) Form CG-NOV, “Notice of Violation(s),” 07/01; and
   (b) Form CG-Complaint, Office [Department of Charitable Gaming Complaint Form, 07/01.
   (2) This material may be inspected, obtained or copied, subject to applicable copyright law, at the Office [Department of Charitable Gaming, Environmental and Public Protection [and—Regulation Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, Monday through Friday, 8 a.m. to 4:30 p.m."

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notice 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 received at the address below until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Chris Lilly
(a) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation sets forth the penalties associated with administrative actions, requires that a notice of violation be given to the organization, and sets forth the complaint procedure.
   (b) The necessity of this administrative regulation: This regulation is necessary so that licensees have some expectation of the penalties associated with certain conduct.
   (c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.560(3) requires the office to establish administrative penalties by administrative regulation.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation assists in the effective administration of the statute, because it sets forth the penalty ranges for administrative actions.
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment makes it optional whether a notice of violation will be given to the licensee on site or whether the initiating document for an administrative action will be the complaint.
   (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to give the office the option of how to notify the licensee of an administrative action.
   (c) How the amendment conforms to the content of the authorizing statutes: It conforms to the authorizing statute because there is no requirement on how the licensee is notified.
   (d) How the amendment will assist in the effective administration of the statutes: It will allow the office to initiate administrative actions by either Notice of Violation or complaint, whichever is most appropriate in the situation.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 700 organizations, 70 facilities, 30 distributors, and 30 manufacturers.
   (4) Provide an estimate of how much this regulation will be impacted by either the implementation of this administrative regulation, if now, or by the change if it is an amendment: There will be very little impact.
   (5) Provide an estimate of how much it will cost to implement this regulation:
   (a) Initial cost: None
   (b) On a continuing basis: None
   (c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.
   (d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment: No fee increase will be necessary.
   (e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
   (f) TIERING: Tiering is not applied, because this regulation applies equally to all licensees.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)

921 KAR 2:017. Kentucky Works supportive services.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) [194A.060(4)] requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the public assistance programs. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance. In conformity with the Social Security Act, 42 U.S.C. 601-619 and federal regulations. KRS 205.203 requires the cabinet to promulgate administrative regulations to develop a work program for recipients of public assistance to provide for immediate employment or preparation for employment, and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation establishes requirements for receiving Kentucky Works supportive services.

Section 1. Definitions. (1) "Approved Kentucky Works activity"
means participation in an allowable activity in accordance with KAR 2:370, Section 2(2)(c).
(2) "Component" means a service or activity in accordance with KAR 2:370, Section 2(2)(c).
(3) "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement, in accordance with KAR 2:370, and referral for removal of concerns takes place.
(4) "Employment" means a person performs a physical or mental activity in exchange for direct monetary compensation.
(5) "Improper payment" means a payment pursuant to KRS 45.923(1).
(6) "Kentucky Transitional Assistance Program" or "K-TAP", means Kentucky's "Temporary Assistance for Needy Families" or "TANF" money payment program for a child as defined in KAR 2006.
(7) "Kentucky Works" means a program, in accordance with KAR 2:370, that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.
(8) "Precomponent" means a waiting period between the dates of component assignment and component commencement.
(9) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

Section 2. Kentucky Works Participation and Supportive Services Payment. (1) The cabinet shall make (except for the exclusions listed in this administrative regulation) a payment for (a) a supportive service [service] cost, to the extent funds are available, necessary for participation in an approved Kentucky Works activity; and (b) cost for an individual participating in the Kentucky Works Program except for the exclusions listed in Section 12 of this administrative regulation.
(2) Kentucky Works activities are described in KAR 2:370, Section 2(2)(c).

Section 3. Transportation. Transportation reimbursement shall be paid in the following situations: (1) Precomponent; (2) Component preparation; or (3) Component participation.

Section 4. Transportation Payment Amount and Authorization. (1) If free transportation is unavailable that meets the needs of the recipient, a payment for transportation shall be provided for an individual participating in an approved Kentucky Works activity, to the extent funds are available, if the individual is required to incur a transportation expense in order to participate.
(b) After receipt of verification, as required in Section 5 of this administrative regulation, a direct payment to the individual shall be made through the System Tracking for Employment Program or "STEP", as follows: 1. Fifteen (15) if free or low-cost transportation is available and meets the needs of the individual, the actual transportation cost shall be paid up to the maximum payment rate established in subparagraph 2 of this paragraph; or 2. If free or low-cost transportation that meets the needs of the individual is unavailable, a direct payment shall be made to the individual per month as follows: a. Ninety (90) dollars for less than four (4) days per month; b. Sixty (60) dollars for four (4) to sixteen (16) days per month; or c. One hundred (100) dollars for seventeen (17) or more days per month.
(2) [For special circumstances, as determined by the cabinet, if the actual transportation cost exceeds the maximum payment rate in subsection (1)(b) of this section, the actual--cabinet-negotiated rate, not to exceed $100 per month, may be paid, if approved by the cabinet.
(3) A payment shall be issued in accordance with KAR 2:370, Section 2:370.
(4) [46] In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, a transportation payment shall be provided for the period of up to: (a) Two (2) weeks prior to the scheduled start of component activity; and (b) One (1) month during in component activity if subsequent component activity is scheduled to begin within that period.

Section 5. Restriction on Authorization of a Transportation Payment. (1) To verify the anticipated need for a transportation expense payment, the K-TAP recipient shall provide the following verification: (a) "PA-33, Verification of Transportation and Participation in Education or Training Activity"; or (b) "PA-SGN, Second Notice Verification of Transportation and Participation in Education or Training Activity".
(2) A payment shall not be made if: (a) Verification listed in subsection (1) of this section is not returned by the end of the month prior to the month in which the cost will be incurred; or (b) The recipient is penalized for noncompliance with a Kentucky Works activity, in accordance with KAR 2:370.

Section 6. Other Supportive Services. (1) To the extent funds are available, other supportive services shall be provided if necessary for participation in the approved Kentucky Works activity of: (a) Component preparation; (b) Component participation while the K-TAP case remains active; or (c) Acceptance of a new job or retention of an existing one if the parent or other adult: 1. Has accepted employment and a start date of employment is provided, except if an item is required as a condition of being hired by the employer; or 2. Is employed.
(2) Other supportive services shall be approved by the cabinet. An item or service needed by the K-TAP recipient for participation in a Kentucky Works activity that may be approved is the purchase of: (a) A drug screening test fee; (b) Up to three (3) uniforms for employment, if not reimbursable by the employer; (c) One (1) suitable interview outfit for preemployment purposes; (d) Required clothing or shoes particular to a service, profession, or company, if not reimbursable by the employer; (e) School supplies and books; (f) A licensing fee which includes: i. Exam costs required to obtain a professional license or certificate; or ii. Driver's license fee; (g) A timesheet necessary for employment or training; (h) The cost to have a photo identification; (i) The cost of a criminal records check fee, if required by the provider or employer; (j) A driver's education class fee; (k) Tools required for employment; or (l) Another item or service needed by the K-TAP recipient for participation in the Kentucky Works activity, as determined by the cabinet.
(3) Payment for other supportive services shall be limited to a cumulative total [limit] of $400 per individual in a twelve (12) month period, beginning with the first day of the month in which the initial payment is issued.
(4) A payment may be authorized for an eligible parent or other adult as a specified relative pursuant to Section 10 of KAR 2:370.
(5) A penalized or sanctioned K-TAP ineligible adult shall not be eligible for other supportive services.
(6) A retroactive payment for other supportive services shall not be made for an item purchased by a penalized or sanctioned individual who later cures the penalty. After the parent or other adult cures the penalty or sanction, an eligible expense may be authorized.
(8) Except in accordance with Section 7 of this administrative regulation, a medical service or item shall not be an allowable supportive service.

Section 7. Allowable Medical Service or Item. If non-TANF funding is used, to the extent funds are available, the purchase of the following item or service shall be allowed for a K-TAP recipient, if needed for participation in the Kentucky Works activity and not reimbursable through Medicaid, as determined by the cabinet and limited to:

(1) Eyeglasses or corrective lens;
(2) Dentures;
(3) Hearing aids; and
(4) Medical service or item required as a condition of employment.

Section 8. Car Repairs. (1) If a free service for car repairs, including a vocational school automotive program, is unavailable that meets the needs of the recipient, a car repair expenditure shall be provided, to the extent funds are available, if necessary for participation in the approved Kentucky Works activity of:

(a) Component preparation; or
(b) Component participation, including [unsubsidized] employment while the K-TAP case remains active.

(2) Car repair expense shall meet the following criteria to be considered for payment:

(a) Car repair that makes the car functional;
(b) Property tax on the vehicle;
(c) Vehicle registration;
(d) Licenses fee;
(e) Liability insurance to drive a vehicle;
(f) New or used automotive part to be purchased by the K-TAP recipient to make the car functional; and
(g) Other car expense needed by the K-TAP recipient that would allow participation in the Kentucky Works activity, as determined by the cabinet.

(3) A car repair expenditure listed in subsection (2) of this section shall require:

(a) An estimate of the cost; and
(b) Approval by the cabinet.

(4) Auto repair work [that] shall:

(a) Be completed by a garage, unless the repair is completed by a vocational school automotive program; or
(b) Be the responsibility of the K-TAP recipient if a payment is made for a new or used automotive part as specified in subsection (2)(f) of this section.

(5) Prior to approval of a car repair expenditure, the cabinet shall verify the participant owns the vehicle.

(6) The restrictions on authorization and verification of a supportive service payment described in Section 12 [14] of this administrative regulation shall apply to a car repair expense and payment.

(7) Payment for car repairs shall be limited to a cumulative total of $500 per eligible family during a twelve (12) month period, beginning with the first day of the month in which the initial payment is issued [The payment maximum for total car repair expenditures shall be $500 per year per eligible family].

Section 9. Short-term Training. To the extent funds are available, a fee for a short-term training program shall be eligible for payment for a K-TAP recipient if the training program is:

(1) Not eligible for federal financial aid; and
(2) Likely to lead to paid employment and is in accordance with the participant's transitional assistance agreement, in accordance with 921 KAR 2:370.

Section 10. Required Fees. (1) To the extent funds are available, the following payment may be made for an eligible recipient:

(a) A training registration fee;
(b) Financial aid application fee;
(c) Testing fee;
(d) Application fee required by a vocational school for a specified program;
(e) Liability insurance fee;
(f) Copy of records fee;
(g) Activity fee if mandated by the institution; or
(h) Other required fee.

(2) Required fees shall not exceed $200 per payment.

Section 11. [Work-Incentive Bonus. (1) To the extent funds are available, for a K-TAP recipient discontinued prior to the adoption of 921 KAR 2:620, a work-incentive bonus of $500 shall be paid to an adult who:

(a) Becomes ineligible for K-TAP with reported earnings;
(b) Obtains and maintains full-time unsubsidized employment that shall be at least thirty-five (35) hours per week at no less than the federal minimum wage;
(c) Reports and provides verification of the wages within ten (10) days of receipt of the wages;
(d) Maintains continuous employment for at least ninety (90) days; and
(e) At the end of the ninety (90) day period:

1. Requests a bonus within thirty (30) days of the end of the ninety (90) day period; and
2. Provides the cabinet with a current mailing address.

(2) If the adult described in subsection (1) of this section maintains continuous employment for 180 days an additional $500 shall be paid, if requested.

(3) If the adult described in subsection (1) of this section maintains continuous employment for 270 days an additional $500 shall be paid, if requested.

(4) The work-incentive bonus for an adult discontinued from K-TAP with earnings shall be limited to three (3) payments of $500 during the lifetime of the adult.

(5) A K-TAP applicant or recipient shall be advised of the work incentive bonuses at the time of application, at recertification and through periodic mailings that remind them of incentives that are available.

(6) An adult discontinued from K-TAP shall not be required to meet a gross income limit to receive a work incentive bonus.

(7) A work-incentive bonus shall:

(a) Not be available to a K-TAP recipient who is discontinued on or after the adoption of 921 KAR 2:620, and
(b) Be available to a K-TAP recipient discontinued prior to the adoption of 921 KAR 2:620 if eligible, for a period of nine (9) months after the adoption of 921 KAR 2:620.

Section 12.] Educational Bonus. (1) An educational bonus of $250 per individual shall be paid to a K-TAP adult or child who reports and verifies:

(a) Receiving a:
1. High school diploma;
2. GED certificate;
3. Postsecondary school certificate or degree; or
(b) Graduating from English as a second language class.

(2) A short-term training program shall not qualify for postsecondary education.

(3) A K-TAP applicant or recipient shall be advised of the educational bonus and be reminded of available work incentives:

(a) During application;
(b) At recertification; and
(c) Through periodic mailings.

Section 12.] Assistance with Aecess to a Vehicle. (1) In limited areas, to the extent funds are available, a K-TAP recipient may be provided the opportunity to lease or buy a vehicle at a subsidized rate.

(2) To qualify, the K-TAP recipient shall be participating in one (1) of the following Kentucky Works components:

(a) Full-time employment;
(b) Training activity leading to employment; or
(c) Last year of postsecondary education.

Section 14.] Restrictions on Authorization of Supportive Services Payments. (1)(a) To verify an expense and authorize a supportive service payment, except as provided in Section 5 of this administrative regulation, a "PA-32, Authorization for Supportive Services Payments" shall be completed; and

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(b) "PA-32, Authorization for Supportive Services Payments* shall be valid for thirty (30) calendar days from the date issued by the cabinet. 
(2) A payment shall not be made for the period during which:
(a) A valid "PA-32, Authorization for Supportive Services Payment" is not returned; or 
(b) The participant is:
1. Fined or sentenced with a Kentucky Works activity, as specified in 921 KAR 2:270; or 
2. Ineligible.
(c) A supportive service payment shall be issued in accordance with 921 KAR 2:050.

Section 13. [46] Hearings and Appeals. An applicant or recipient of supportive services who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing in accordance with 921 KAR 2:055.

Section 14. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "PA-32, Authorization for Supportive Services Payments*, edition 1/02 [**4456]**;
(b) "PA-32, Verification of Transportation and Participation in Education or Training Activity*, edition 1/02 [**4569]**; and
(c) "PA-32N, Second Notice Verification of Transportation and Participation in Education or Training Activity*, edition 1/06 [**6429]**.

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOLINGER, JR., M.D., Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON, JR., Commissioner
APPROVED BY AGENCY: September 13, 2005
FILED WITH LRC: September 14, 2005 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2005 at 2:00 p.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 2005, 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 close of business October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the types and financial limitations on supportive services for Kentucky Works Program (KWP) participants.
(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform conditions and requirements regarding the payment of KWP supportive services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.002 requires the Cabinet for Health and Family Services to prescribe, by administrative regulation, the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes the requirements and payment maximums for KWP supportive services. KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619. This administrative regulation sets forth these standards in conformity with the Title IV-A State Plan.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes eligibility criteria and financial limitations for all KWP supportive services, including transportation, other supportive services, an allowable medical service or item, car repairs, short-term training, required fees and educational bonuses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the administrative regulation: This administrative regulation is being amended to increase payment maximums for transportation, remove the section relating to the work incentive bonus, remove the section relating to assistance with access to a vehicle, and add a new section allowing the cabinet to recover improper KWP supportive services payments.
(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation to increase the amount of transportation payments to better assist KWP participants in getting to their assigned activities. Transportation payment to KWP participants have not effectively changed since their introduction in 1990. The work incentive bonus was replaced by the Work Incentive (WIN) program in April of 2003. WIN eligibility is established by 921 KAR 2:520. The program relating to assistance with access to a vehicle is no longer in place. Improper payments are required to be collected pursuant to KRS 45.237(4).
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 601-619 by clarifying eligibility requirements and financial limits for KWP supportive services.
(d) How the amendment will assist in the effective administration of the statutes: KRS 205.300(2) requires the cabinet to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes the KWP supportive services of transportation, other supportive services, medical items or services, car repairs, required fees, short-term training and educational bonuses.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation:
(a) This administrative regulation will affect individuals who are receiving assistance from K-TAP and participating in a required KWP activity. As of July, 2005, there were 29,616 families receiving K-TAP and 11,522 individuals participating in KWP.
(b) 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: KWP participants who rely on the cabinet for KWP-related transportation assistance will receive more of a monthly payment, which will better enable the participant to continue participation in their assigned work activity. The cabinet may initiate payment recovery activities if an individual receives an improper supportive service payment due to error, fraud or abuse.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: For the increase in transportation payments, the estimated cost will be $1,564,354 in the current fiscal year. For the ability to collect Improper payments, the cabinet will save an estimated $19,815 in the current fiscal year.
(b) On a continuing basis: For the increase in transportation payments, the estimated ongoing cost will be $3,128,708 per year. For the ability to collect Improper payments, the cabinet will save an estimated $39,630 per year.

(6) What is the source of the funding to be used for the imple-
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(9) "Kentucky Transitional Assistance Program" or "(K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for a child pursuant to 921 KAR 2.006, Section 1.

(10) "Kentucky Works" means a program that assists:
(a) A recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or
(b) A former K-TAP recipient with a job retention service.

(11) "Reasonable distance" means the distance customarily available within a locality.

(12) "Unsuitable of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality child care need as defined by the parent or the health and safety requirements applicable to regulated child care in the commonwealth.

(13) "Vocational education" means a training program that prepares the individual for employment.

(14) "Wage supplementation" means a component in which an employer hires a participant and receives reimbursement from the cabinet for a portion of wages paid to the participant.

(15) "Work Experience Program" or "WEP" means a component which provides in-state work experience to a participant in obtaining regular public or private employment.

Section 2. Program Participation. (1) An adult and teenage parent Kentucky Transitional Assistance Program recipient shall be required to participate in the Kentucky Works Program unless the recipient meets the exception criteria in Section 3 of this administrative regulation.

(2) An adult Kentucky Transitional Assistance Program recipient who does not meet the exception criteria in Section 3 of this administrative regulation shall be required to participate in the Kentucky Works Program as follows:

(a) A one (1) parent household shall be required to participate in a specific activity pursuant to paragraph (c) of this subsection no less than the number of hours per week required in the activity, as determined by the cabinet.

2. The activity shall be required to have at least a minimum of thirty (30) hours per week, and ten (10) hours of which [per week that] may be satisfied through an education activity pursuant to paragraph (c)(7), and of this subsection or in literacy or adult education.

(b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, as determined by the cabinet.

1. If the family receives federally funded child care assistance, the activity shall be required to have at least a minimum of fifty-five (55) hours combined from both parents with the number of hours required of each parent as follows:

3. Thirty-five (35) hours per week for one (1) of the parents, five (5) of which may be satisfied through an education activity pursuant to paragraph (c)(7) and 8 of this subsection or in literacy or adult education; and

4. Twenty (20) hours per week for the other parent, with all twenty (20) hours in an activity pursuant to paragraph (c)(1) through and 6 of this subsection.

2. If the family does not receive federally-funded child care assistance, a two (2) parent household shall participate thirty-five (35) hours per week combined, five (5) of which may be satisfied through an education activity pursuant to paragraph (c)(7) and 8 of this subsection or in literacy or adult education.

3. If an adult is needed to care for a child in the home with a severe disability pursuant to 921 KAR 2.006, a two (2) parent household shall participate pursuant to paragraph 2 of this paragraph.

4. Thirty-five (35) hours per week for one (1) parent with at least thirty (30) hours of the required thirty-five (35) hours per week in an activity pursuant to paragraph (e) of this subsection; and

2. Twenty (20) hours per week for one (1) parent in a two (2) parent household with all twenty (20) hours per week in an activity pursuant to paragraph (e)(1), (2), and 4 of this subsection if:

a. The family receives federally-funded child care assistance; and
b. An adult in the family is not disabled pursuant to 291 KAR 2.006-0 or
   c. An adult is not needed to care for a child in the home with a
      severe disability pursuant to 291 KAR 2.006.
3. If the family does not receive federally-funded child care assistance, a minimum of thirty-five (35) hours per week shall be required for both parents combined.
4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 291 KAR 2.006, shall meet the minimum number of hours of participation in a work activity listed in paragraph (a) of this subsection.
   (c) An activity to be in compliance with the program participation requirement in Kentucky Works may include:
      1. Unsubsidized employment;
      2. Subsidized employment;
      3. Work experience training;
      4. On-the-job training;
      5. Job search and job readiness assistance;
      6. Community service;
7. Full-time enrollment progressing satisfactorily, as defined by the school, in postsecondary or vocational education not to exceed twenty-four (24) cumulative months [and shall be limited to the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection];
8. Satisfactory attendance at secondary school or equivalent in the case of a recipient who has not completed secondary school or equivalent coupled with work or work activity in the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection;
9. Provision of child care services to an individual participating in community service;
10. Based on the findings of the assessment, [the cabinet designee and the participant may determine] placement in a work preparation activity that includes:
   a. Domestic violence counseling;
   b. Life skills training;
   c. A substance abuse program;
   d. Mental health counseling;
   e. Vocational rehabilitation;
   f. Literacy;
   g. Adult education;
11. Wage supplementation, which;
   a. May be available in limited areas and may expand into additional areas (until a statewide implementation is complete); and
   b. Shall not commence until the participant has signed form "KW-230, Wage Supplementation Program Participant Agreement";
12. Participation in a work program approved by the cabinet;
13. Participation in an activity approved by the cabinet.
   (d) To verify the number of hours of participation in approved activities, the K-TAP recipient shall provide the following verification:
   (a) "PA-33, Verification of Transportation and Participation in Education or Training Activity";
   (b) "PA-33N, Second Notice Verification of Transportation and Participation in Education or Training Activity".
Section 3. Exceptions to Program Participation. (1) A Kentucky Transitional Assistance Program recipient who is head of household, who has not obtained a high school diploma or a graduate equivalency diploma and has not attained twenty (20) years of age shall be deemed to be engaged in work for a month in a fiscal year if the recipient:
   (a) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or
   (b) Participates in education that is directly related to employment for at least twenty (20) hours a week.
   (2)(a) An adult Kentucky Transitional Assistance Program recipient shall not be required to comply with a program participation requirement for up to twelve (12) months if the recipient is:
1. Single custodial parent, and
2. [an individual] Caring for a child who has not attained twelve (12) months of age,]
   (b) The twelve (12) months of exemption from a work participation requirement shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:
      1. Consecutive; or
      2. Cumulative.
   (3)(a) For a Kentucky Transitional Assistance Program recipient who is or has been victimized by domestic violence, compliance shall be limited to [if]
   (b) If a Kentucky Transitional Assistance Program applicant or recipient is identified as a victim of domestic violence or has a history of domestic violence, an appropriate services plan shall be required for the individual pursuant to 291 KAR 2.006, Section 23(1).
4. A Kentucky Transitional Assistance Program recipient shall be deemed to be engaged in work for a month if the recipient is:
   (a) The only parent or caretaker relative in the family with a child who has not attained six (6) years of age; and
   (b) Engaged in work for an average of at least twenty (20) hours per week during the month.
5. An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works pursuant to Section 3 of this administrative regulation.

Section 4. Program Participation Requirements. (1) Assessment.
   (a) The cabinet or another entity designated by the cabinet shall make an assessment of the individual's employability on "KW-200, Kentucky Works Assessment Form".
   (b) Other agencies shall assist in the assessment process as needed.
   (c) The assessment shall include:
      1. Consideration of basic skills;
      2. Occupational skills; and
      3. Concerns and other relevant factors.
   (2) Self-sufficiency plan. Based on the findings of the assessment, the cabinet designee and participant shall jointly develop a self-sufficiency plan by completing the "KW-202, K-TAP Transitional Assistance Agreement". This plan shall contain:
      (a) An employment goal for the participant;
      (b) A service to be provided by the cabinet including child care; and
      (c) An activity to be undertaken by the recipient to achieve the employment goal; and
      (d) Other needs of the family.
   (3) Recipients shall be notified of a referral to a specific Kentucky Works Program activity in writing on form:
      (a) "KW-105, Kentucky Works Referral Form (Participant)";
      (b) "PA-218A, New Change Referral";
      (c) "KW-945, WEP Referral Form".
   (4) An adult applicant or recipient of the K-TAP benefit group shall register for work using form "PA-511, Workforce KY Customer Registration" except for a member who is:
      (a) Under age eighteen (18);
      (b) Age sixty (60) or over;
      (c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to Section 11(13) of 291 KAR 2.016;
      (d) Receiving benefits based on 100 percent disability;
      (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or
      (f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:
   (a) At the request of a Kentucky Works participant;
   (b) At the request of a service provider; or
   (c) When a situation is identified that could result in a penalty pursuant to Section 7 of this administrative regulation.
(2) The conciliation shall be conducted by the cabinet or contractor.
Section 6. Excused from Penalties. (1) A recipient shall be excused from a penalty for failure to comply with the Kentucky Works Program, pursuant to Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:
(a) The individual is a single custodial parent who has a demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent:
1. Cannot locate appropriate child care;
2. Cannot locate child care at a reasonable distance from home;
3. Determines the unsuitability of informal child care; or
4. Cannot locate affordable child care arrangements;
(b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;
(c) Child care is terminated through no fault of the applicant or recipient;
(d) Child care does not meet the needs of the child, for example: child with a disability;
(e) The individual is unable to engage in employment or training for a mental or physical reason as verified by the cabinet;
(f) A recipient is required to provide constant care for at least six (6) hours daily for a household member who is a parent, spouse, or child with a disability as documented by medical evidence or by a reliable information source, as verified by the cabinet; and no alternative care arrangement is available; or another household member requiring the presence of the participant as documented by medical evidence or by a reliable information source, as verified by the cabinet;
(g) The participant is temporarily incarcerated or institutionalized for thirty (30) days or less;
(h) The cabinet determines there is discrimination by an employer and a formal complaint has been filed based on:
1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious belief;
7. National origin; or
8. Political belief;
(i) Work demand or condition renders continued employment unreasonable including:
1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;
(j) Wage rate is decreased subsequent to acceptance of employment;
(k) The participant accepts a better job that, because of a circumstance beyond the control of the recipient, does not materialize; or
(l) The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.
(2) The duration of good cause criteria may vary according to an individual's circumstance.

Section 7. Penalties. (1) If [When] a Kentucky Transitional Assistance Program recipient fails to comply with a requirement of the Kentucky Works Program, the recipient [he] shall be subject to a Kentucky Works and Kentucky Transitional Assistance Program penalty. Failure to comply shall be found if the recipient [when the penalty]
(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity, including:
1. An assessment interview;
2. An assessment; or
3. Self-sufficiency plan development and completion of the [Transitional Assistance Agreement,] KW-202;
(b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a program activity in accordance with form KW-202 [pursuant to the Transitional Assistance Agreement, KW-202];
(c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;
(d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or
(e) Fails to register for work unless an exception in Section 4(d)(9) of this administrative regulation applies; [fails to register for work];
(2) Except for a requirement listed in paragraph (b) of this subsection, a K-TAP recipient who has failed to comply with a Kentucky Works requirement without good cause, pursuant to Section 6 of this administrative regulation, or register for work unless an exception pursuant to Section 4(d)(9) of this administrative regulation applies, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; [are]
(b) Assistance to the benefit group shall be discontinued if the K-TAP recipient, fails, without good cause pursuant to Section 6 of this administrative regulation, to:
1. Keep appointment for an assessment interview; or
2. Complete an assessment, pursuant to Section 4 of this administrative regulation.
3. The penalties in paragraph (a) or (b) of this subsection shall not be applied until after a conciliation procedure is conducted pursuant to Section 6 of this administrative regulation.
(3) [If] The penalties [penalty] in paragraph (a) or (b) of this subsection shall continue to be applied until the participant complies with a program requirement.
A penalty that totals three (3) months for a household member can be waived if the recipient [he] is not at fault for noncompliance and participates in another job search.
(d) [If] The penalty in paragraph (a) or (b) of this subsection shall be applied; and after a conciliation procedure is conducted pursuant to Section 6 of this administrative regulation.

Section 8. Hearings and Appeals. An applicant or recipient of benefits pursuant to a program described herein who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing pursuant to 521 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement. (1) A cost incurred by a [the] training site agency because of participation in WEP shall not be reimbursed.
(2) A WEP participant shall not be involved in partisan politics.
(3) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services.
(4) A WEP participant shall not infringe upon the promotional opportunity of a currently employed individual.
(5) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:
(a) Race;
(b) Color;
(c) Religion;
(d) Sex;
(e) National origin;
(f) Age;
(g) Disability; or
(h) Political belief or affiliation.
(6) Prior to placement in a WEP activity, a WEP participant shall sign form "KWET-240, Work Experience Training Program Participant Agreement."
(7) A training site agency shall:
(a) Complete a Department for Community Based Services questionnaire relating to the operation of the training site agree-
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ment;
(b) Not displace a currently employed worker by a WEP participant, including a partial displacement including a reduction of the:
1. Hours of nonovertime work;
2. Wages: or
3. Employment benefits;
(c) Comply with 42 U.S.C. 12101 et seq.;
(d) [Shall] Report a personnel problem to the departmental representative designated by the cabinet;
(e) [Shall] Maintain accurate time and attendance records for a WEP participant;
(f) Verify time and attendance records for a WEP participant on Form PA-33, which shall "Certification of Education or Training; Child Care and Transportation" that will be submitted by a WEP participant;
(g) [Shall] Grant access for the Department for Community Based Services to the training site during working hours to counsel a participant and to monitor the site;
(h) [Shall] Immediately report an injury to the designated representative;
(i) [Shall] Conduct an investigation and submit a report upon the request of the Department for Community Based Services;
(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;
(k) [Except as authorized by law, or in writing by a WEP participant, shall maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to the "KWET-241, WEP Training Site Agreement", except as authorized by law or in writing by a WEP participant;
(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity;
(m) Provide:
1. Sufficient training to ensure development of appropriate skills;
2. New task after mastery of a skill; and
3. Adequate participation instruction and supervision at all times,[];

(1) (a) A training site agency shall:
(a) Provide the participant a safe training place;
(b) [b)] Assure a participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 et seq., is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant;
(c) [and] (f) Provide adequate material to complete a training activity in a safe environment; and
(g) Sign form KWET-241 with the cabinet and the participant containing a statement of:
1. The conditions established by subsections (1) through (8) of this section; and
2. The period covered by the agreement, including the required weekly number of hours of participation.

(7) Changes to the KWET-241 shall be established in writing on form "KW-244, WEP Training Site Agreement Amendment".

(8) A WEP participant shall have the right to request a public hearing relating to a grievance or complaint.

(9) A training site agency shall sign a "WEP Training Site Agreement" with the cabinet containing a statement of:
[a] The conditions established by subsections (1) through (8) of this section; and
[b] The period covered by the agreement, including the required weekly number of hours of participation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "KW-105, Kentucky Works Referral Form (Participant)", edition 1/06;
(b) "KW-200, Kentucky Works Assessment Form", edition 1/06;
(c) "KW-202, K-TAP Transitional Assistance Agreement", edition 1/06;
(d) "KW-204, Conciliation Contact", edition 1/06;
(e) "KW-205, Conciliation Results", edition 1/06;
(f) "KW-211, Noncompliance Contact", edition 1/06;
(g) "KW-230, Wage Supplementation Program Participant Agreement", edition 1/06;
(h) "KW-244, WEP Training Site Agreement Amendment", edition 1/06;
(i) "KW-246, WEP Referral Form", edition 1/06;
(j) "KW-247, WEP Experience Training Program Participant Agreement", edition 1/06;
(k) "KWET-241, WEP Training Site Agreement", edition 1/06;
(l) "PA-33, Verification of Transportation and Participation in Education Training Activity", edition 1/06;
m) "PA-33N, Second Notice Verification of Transportation and Participation in Education Training Activity", edition 1/06;
(n) "PA-218A, New Chance Referral", edition 1/06; and
(o) "PA-511, Workforce Kentucky Customer Registration", edition 1/06.

(2) This material may be inspected, copied, or obtained at no charge, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOLSINGER, JR., M.D., Secretary
MIKE BURNSIDE, Undersecretary
TOM EMMERTON, JR., Commissioner
APPROVED BY AGENCY: September 13, 2005
FILED WITH LRC: September 14, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2005, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 2005, 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 be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SWB, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the technical requirements of and activities allowed under the Kentucky Work Program (KWP).
(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform technical requirements for all individuals participating in KWP.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.002 requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes the technical requirements and allowed activities of the KWP. KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619. This administrative regulation sets forth these standards in conformity with the Title IV-A State Plan.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes uniform technical eligibility requirements for participation in KWP, including weekly participation requirements, allowable activities, good cause reasons for failure to participate and penalties for failure to participate without good cause.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the administrative regulation: This administrative regulation is being amended to add a definition of "constant care" as used in the "excused from penalties" section; to clarify good cause relating to the provision of constant care for a household member; and other technical changes for clarity to comply with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to add a definition of "constant care" as used in the "excused from penalties" section in order to match language found in 921 KAR 2:006. Other changes are for clarity and to comply with KRS Chapter 13A.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 601-619 by clarifying technical eligibility requirements of KWP.
(d) How the amendment will assist in the effective administration of the statutes: KRS 205.300(2) requires the cabinet to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes technical eligibility requirements for the KWP program.
(3) List the type and number of individuals, business, organizations, state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP and are required to participate in KWP. As of July, 2005, there were 29,616 families receiving K-TAP and 13,824 individuals required to participate in KWP.
(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: KWP participants who are providing care for an incapacitated household member may claim good cause for not participating in KWP. The new definition of "constant care" will help determine whether or not these participants are providing a level of constant care that will preclude their participation from KWP, excusing them from penalties for failing to participate.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.
(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.
(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: There are no increases in fees or funding required with 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 fees nor directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tierng is not applied, since application of policy is applied in a like manner for all individuals statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. KRS 205 2003
3. Minimum or uniform standards contained in the Federal mandate. Federal regulations contain standards regarding the definition of "assistance" funded with TANF federal funds.
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 standards, or additional or different responsibilities or requirements: None.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)

922 KAR 1:470. Central registry.

RELATES TO: KRS 17.165(5), 61.876 (1449.060(4)), 199 856(19), 600.020(1), (55), (56), 42 U.S.C. 5106a
NECESSITY, FUNCTION and CONFORMITY: 194A.050(1), authorizes the secretary [KRS 1049.060(4)] requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The cabinet is required to maintain records for the purpose of conducting child abuse or neglect checks mandated by law. KRS 605.150 permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(4), which authorizes the cabinet to perform services necessary for the protection of children. 2005 Ky. Acts ch. 173 Part 1, H 10 (3) authorizes the secretary to promulgate administrative regulations necessary to prescribe criminal background investigation fee amounts. This administrative regulation establishes the procedure by which the cabinet shall conduct a child abuse or neglect check.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.
(a) "Abused or neglected child" is defined in KRS 500.020(1).
(b) "Sexual abuse" is defined in KRS 500.020(55).
(c) "Sexual exploitation" is defined in KRS 500.020(56).

Section 2. Central Registry. (1) The central registry shall include the name of each individual:
(a) Who has been found by the cabinet to have abused or neglected a child; and
(b) Who [-if the abuse or neglect occurred on or after October 1, 1998--]
(a) The individual waived the right to appeal a substantiated finding of child abuse or neglect in accordance with
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b. 922 KAR 1:330; or
c. [and] 922 KAR 1:330, Section 9; or
d. Whose [of]-The substantiated incident was upheld upon appeal.

(2) Each name shall:

(a) Remain on the central registry for a period of at least seven (7) years; and
(b) Be removed from the central registry after a period of seven (7) years if:

1. No additional incident of child abuse or neglect has been substantiated by the Cabinet since the time of the incident for which the individual's name was placed on the registry; and
2. Cabinet records indicate that the incident for which the individual's name was placed on the registry did not relate to:
   a. Sexual abuse or sexual exploitation of a child;
   b. A child fatality;
   c. A criminal conviction related to child abuse or neglect;
   d. A civil judicial determination related to child abuse or neglect; or
   e. Termination of parental rights in accordance with KRS Chapter 625.

(3) This administrative regulation shall not apply to cabinet background checks required for foster or adoptive services.

(4) This administrative regulation shall not limit the cabinet's ability to disclose information in accordance with 42 U.S.C. 5106(b)(2)(A)(vii), (ix), and (x).

Section 3. Procedure for Requesting a Central Registry Check.

(1) If information from the central registry is required by law, a request for a central registry check may be made by any:

(a) Individual.

(b) Organization; or

(c) Other entity.

(2) The cabinet shall conduct a check of the central registry [shall be made] for each individual who:

(a) Submits a request for a check of the central registry in accordance with subsection (4) of this section; and

(b) [Applies for initial licensure;]

1. Is hired by, or volunteers with an entity required by law to obtain information contained in the central registry; or-
2. Is hired by, or volunteers with, an entity that may require a central registry check as a condition for working with children on a regular basis.

(3) An individual who is not required by law to obtain information contained in the central registry shall submit an open records request in accordance with 922 KAR 1:510.

(4) A request for a central registry check shall be made by submitting to the cabinet:

(a) A completed form, "DPP-156, Central Registry Check," [PAP-166, Central Registry Check-], incorporated by reference, to the cabinet within five (5) working days after:

1. [The date of employment of an individual required by law to submit to a central registry check; or]
2. [A volunteer's first day, if the volunteer is required by law to submit to a central registry check; and]

(b) A non-refundable fee of ten (10) dollars:

1. Submitted by check or money order; and

2. Made payable to the Kentucky State Treasurer.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOLINGER, JR., M.D., Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON, JR., Commissioner
APPROVED BY AGENCY: September 13, 2005
FILED WITH LRC: September 14, 2005 at 11 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2005, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 2005, 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 close of business October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure by which the cabinet conducts a child abuse or neglect check on an individual as a condition of his or her work with children, and then releases that information upon appropriate request.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline the record check process used to determine, as required by state law or administrative regulation, whether an individual has been found by the cabinet to have abused or neglected a child.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet shall conduct a records check as mandated by KRS 17.165(5) and 199.896(19).

(d) This administrative regulation conforms to the effective administration of the statutes: This administrative regulation establishes procedure by which the cabinet shall conduct a records check as mandated by KRS 17.165(5) and 199.896(19).

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

(a) How the amendment will change this administrative regulation: This amendment clarifies administrative regulation procedure by which the cabinet conducts a records check on an individual as a condition of his or her work with children, and then releases that information upon appropriate request. The cabinet establishes a fee for the records check service.

(b) The necessity of the amendment to this administrative regulation: Amendment of this administrative regulation is necessary to clarify the cabinet's Open Records authority under KRS 61.876, its release of confidential information authority under 42 U.S.C. 5106a (b)(2)(A)(vii), (ix) and (x), and its prescription of criminal background investigation fee authority under 2005 Ky. Acts ch. 173 Part I, H. 10.(S), KRS 61.876.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of authorizing statutes KRS 17.165(5) and 199.896(19) by describing procedures for the cabinet's compilation, maintenance and release of child abuse or neglect information.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 17.165(5) and 199.896(19) by describing procedures for the cabinet's compilation, maintenance and release of child abuse or neglect information to an individual. It ensures that this administrative regulation shall not limit the cabinet's ability to disclose information in accordance with 42 U.S.C. 5106a (b)(2)(A)(vii), (ix) and (x), and initiates a record check fee of $10.

(3) List the type and number of individuals, business, organization, etc., subject to state or federal administrative regulation: Each year, the cabinet performs approximately 40,000 Central Registry Checks for child abuse or neglect substantiations. Required to undergo these background investigations...
are day care employees or volunteers (pursuant to 922 KAR 2:090), applicants for day care center licensure (pursuant to 922 KAR 2:090), child-placing agency employees (pursuant to 922 KAR 1:310), child-caring facility employees (pursuant to 922 KAR 1:300) and IMPACT-PLUS subcontractors (pursuant to 922 KAR 3:030).

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation and, if new, or by the change, if it is an amendment. It is estimated that 40,000 child abuse or neglect checks per year will be requested on behalf of day care centers, child-placing agencies, child-caring facilities and IMPACT-PLUS service providers. Each check will incur a new fee of $10.

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

(a) Initially: No additional cost to the cabinet.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted Funds - 100%.

(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 amendment authorizes new fees under 2005 Ky. Acts ch. 173 Part 1, H. 10 (3) to prescribe fees for criminal background investigations. Based upon annual estimates of 40,000 child abuse or neglect checks, $117,000 in personnel costs for processing Central Registry Checks and $3,143,000 in computer system maintenance costs, the cabinet may justify a Central Registry Check fee in excess of $30. However, $10 is in keeping with the initial criminal background check fee currently assessed by the Administrative Office of the Courts and the Kentucky State Police.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes a cabinet child abuse or neglect check fee of $10.

(9) TIERING: Is tiering applied? There is no tiering as this administrative regulation will be implemented statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. In compliance with U.S.C. 5106a (b)(2)(A)(vi), (x) and (x), this administrative regulation allows, in certain circumstances, the release of confidential information relating to child abuse or neglect.

2. State compliance standards. In compliance with 2005 Ky. Acts ch. 173 Part 1, H 10 (3) and KRS 194A.050(1), this administrative regulation clarifies the process by which the cabinet assesses a fee for and conducts child abuse or neglect checks, and ensures the cabinet’s ability to disclose information in accordance with 42 U.S.C. 5106a (b)(2)(A)(vii), (x) and (x).

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a (b)(2)(A)(vii), (ix), (x) and (x), requires states receiving Title IV-B funds to provide assurances that child abuse and neglect records shall only be made available to: Individuals who are the subject of the report; federal, state, or local government entities, or their agents, if necessary to carry out their responsibilities to protect children from abuse and neglect; child abuse citizen review panels; a grand jury or court if necessary for the determination of an issue; and others statutorily authorized by the state. Public disclosure of this confidential information is only allowable in a case of child abuse or neglect which has resulted in a child fatality or near fatality.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate: No, the amendment ensures that this administrative regulation shall not limit the cabinet’s ability to disclose information in accordance with 42 U.S.C. 5106a (b)(2)(A)(vii), (x) and (x).

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None. The amendment ensures that this administrative regulation shall not limit the cabinet’s ability to disclose information in accordance with 42 U.S.C. 5106a (b)(2)(A)(vii), (x) and (x).

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)


RELATES TO: KRS 45.315, 61.870, 61.884, 194A.060, 194A.535(1), 188A.050, 205.455(4) [194.636], 209.030(2), (7), 209.140, Chapter 209A, 211.350, 211.380, 403.720(1), 620.0302, 620.050, 48 C.F.R. 74.29,

STATUTORY AUTHORITY: KRS 194A.050(1) [194.636(4)], 194A.050(1), 209A.030(1), 209A.030(2) [506A.882]

NEEDED, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations authorized by applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth, KRS 209.030(1) requires [authorizes] the secretary [Cabinet for Health and Family Services] to promulgate [adopt] administrative regulations to effect the purposes of KRS Chapter 209 governing the protective services to adults. KRS 209A.030(1) requires the secretary to promulgate administrative regulations to effect the purposes of KRS Chapter 209A governing the protective services to victims of domestic violence. [Procedure for guidelines and policies to provide for the protection of adults. KRS 194.535 authorized the cabinet to adopt administrative regulations setting forth the requirements for initial training courses for staff of agencies providing protective child services for victims of domestic violence. Executive Order 09-563, effective July 2, 1996, reorganized the cabinet for human resources and placed the department for social services under the cabinet for families and children. This administrative regulation establishes [reasonable] performance standards for qualifying applicants for state funds related to domestic violence [spouse abuse] shelters.

Section 1. Definitions. (1) "Agency" means a private or public nonprofit incorporated organization, or organization in the process of obtaining nonprofit status:

(a) That has the capacity to provide domestic violence shelter and related services to a client; and

(b) [any private or public nonprofit incorporated organization that has the capacity to provide spouse abuse shelter services, and] With whom the cabinet or its designees contracts for services.

(2) "Cabinet" means Cabinet for Health and Family Services.

(3) "Client" means an individual:

(a) Domestic violence victim; [spouse abuse] and

(b) Dependent child of the domestic violence victim [their dependent children].

(4) "Dating violence" means an act by an individual that is:

(a) Against another individual with whom that person has or has had a dating relationship; and

(b) Intended to result in:

(a) Physical harm; b. Bodily injury; c. Assault; or

2. A threat that reasonably places the individual in fear of:

a. Imminent physical harm; b. Bodily injury; c. Assault or

Sexual assault.

(5) "Director" means an [the] individual responsible for the administration of the domestic violence [spouse abuse] shelter and related services.

(6) "District" is defined by KRS 205.455(4).

(7) "Domestic violence and abuse" is defined by KRS 403.720(1).

(8) "Domestic violence shelter" means a program which provides a client;
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(a) A safe place to stay; and
(b) Related services including:
1. Counseling;
2. Advocacy;
3. Food; and
4. Information and referral services.

(2) (a) "Governing board" means a legally-constituted group of individuals whose function is to oversee operations of an agency providing domestic violence [spouse-abuse] shelter.

(10) "Reportable incident" means an occurrence that would require the director of the domestic violence shelter to make a report of the incident to the program's governing board for liability reasons.

11. [and-related services and with whom the state contract for spouse-abuse services;]

(e) "Spouse-abuse shelter" means a program which provides violence of spouse-abuse and their dependent children a safe place to stay, and-related services including:

(a) Counseling;
(b) Advocacy;
(c) Food; and
(d) Information and referral services.

(f) "Volunteer" means a person who:
   (a) [Who is either third-party funded or who is donating free service time, and]
(b) Works directly in the domestic violence [spouse-abuse] shelter or is performing a related service at the request of the director.

Section 2. Management. (1) (a) Each agency shall be managed by a governing board constituted to allow broad community participation in its activities.

(b) The governing board shall:

1. Have the authority and responsibility to ensure that the agency complies with the administrative regulations and other relevant federal, state, and local laws, including KRS 61:870 to 61:884, 209:001(2), and (7), 209:140, 209A, 46 C.F.R. 74 and 82, where applicable;
   2. Be responsible for agency compliance with applicable federal, state, and local administrative regulations.

(a) Develop written personnel policy and procedures including:

   a. [1] Job classifications;
   b. [2] Specifications;
   d. [4] Attitude andleave policies;
   e. [5] Fringebenefits;
   g. [7] Personnel grievance procedures; and
   h. [8] Hiring and firing practices, including lay-off and disciplinary procedures;

   [2] (b) Adopt written bylaws, including:

   a. [1] The purpose of the agency;
   b. [2] Number of members;
   c. [3] Qualifications for board memberships;
   d. [4] Composition;
   e. [5] The method of selecting members;
   f. [6] Terms of members;
   g. [7] Officers and duties;
   h. [8] Method of electing officers and chairpersons;
   i. [9] Standing committees,
   [10] Provision for approval of programs and budgets;
   k. [11] The frequency of board meetings and attendance requirements; and
   l. [12] Provision for official record of meetings and action taken;

   4. [4] Be responsible for ensuring that all reports, records [submitting a necessary report, record, or information deemed necessary to determine fiscal, administrative and programmatic effectiveness are submitted to the cabinet or its designee.

(2)(a) A domestic violence shelter [An advisory board] shall create an advisory board [be-created] for the purpose of studying and recommending functions to the governing board if the governing board provides no direct oversight to the domestic violence shelter.

(b) The governing board shall:

1. (e) Not delegate the responsibility of the final approval, responsibility, accountability, or direction of agency policy to the advisory board, and
2. (f) Retain responsibility for the functions specified in subsection (1) of this section [in paragraph (a) of this subsection].

(3) Board meetings shall be conducted in compliance with the [provisions of the Open Meeting Law, KRS 61:806-61:820] the most current version of "Roberts Rules of Order" [shall be applicable to board meetings].

(4) The governing board shall make a copy of the personnel policy and procedures [shall be] available to staff, volunteers, and the cabinet or its designee [department].

(5) The governing board and advisory board, if appropriate, shall:

(a) [Forward the official minutes of each meeting within thirty (30) days of approval by:

1. [of a governing board of each agency shall be forwarded within thirty (30) days to] Each member of the board; (board(e)) and
2. [fe] The cabinet or its designee; and

(b) Follow the guidelines in the most current version of "Robert's Rules of Order" (department and shall contain:

(a) Date and place of the meeting;
(b) Names of members present;
(c) Subject matter discussed and actions taken;
(d) Name of the reporter.)

(6) If the agency is a subsidiary of a larger entity, the provisions of subsections (1) through (4), (5) and (5) of this section shall apply to the larger entity.

Section 3. Staff. (1) (a) An [The] agency's governing board shall appoint one (1) staff person as a domestic violence [spouse-abuse] shelter director.

(b) The director shall:

1. (e) Have responsibility for supervision of the duties and activities of staff and volunteers;

2. (f) Coordinate domestic violence [spouse-abuse] shelter and related services;

3. (g) Fulfill the duties as required by the governing and advisory board; and


(2) The agency shall:

1. [a] Maintain and assure the provision of competent staff to provide services at the domestic violence [spouse-abuse] shelter as follows:

   [1] Volunteers shall be under the control and direction of the director even though they are not [considered] paid staff and
2. [h] Staff shall:

   a. [1] Be at least eighteen (18) years of age;
   b. [2] Have education, training or experience to perform particular job;
   c. [and (e)] Have a willingness to work with others, including clients coping with multiple issues;
   d. Be knowledgeable in domestic violence and abuse issues;
   e. Be knowledgeable in dating violence issues;
   [h] [under stress];

   (3) (a) [The agency shall] Submit to the cabinet or its designee [department] a staffing pattern indicating:

1. [a] Areas of responsibility;
2. [b] Lines of authority and supervision;

[3]: (d). The agency shall: Provide and maintain a record of orientation and in-service training for staff and volunteers responsible for service delivery;

[4] (e) Each agency shall:

1. [a] Implement a system to assure compliance with;
   1. [Affirmative action standards, and]
   2. [Equal opportunity employment standards; and]
   3. [b] Provide a system for hearing and resolving grievances of staff and volunteers; and
[5] (f) Each-agency shall [Provide cabinet-approved training;

1. As govern by KRS 194A, 535(1) to all full and part-time staff and volunteers having direct contact with clients; and
Section 4. Physical Facilities. (1) The domestic violence [spouse-abuse] shelter shall:
(a) Comply with applicable local, state and federal building, fire, safety and health codes relating to construction, sanitation, and building maintenance, including:
   1. KRS 45.313;
   2. 215 KAR 7:120;
   3. 215 KAR 7:125;
   4. KRS 100.050;
   5. KRS 1989.060; and
   6. KRS 211.350 to 211.380.

(b) [The spouse-abuse shelter shall]:
   1. Be of sound construction;
   2. [and] Suitable for residential use;
   3. (3) The spouse abuse shelter shall:
      (a) Be Dry;
      (b) [Be] Adequately heated, ventilated, [and] lighted; and
      (c) Have:
         1. Windows, doors, stoves, heaters, furnaces, pipes, and ventilating fans protected;
         2. [and] Have Screening provided for windows and doors unless air-conditioned;
         3. [and] Have Floors free from splinters and easily cleaned; and
         4. Have Gas heaters and stoves properly ventilated.

(2) The domestic violence shelter shall provide (4) a recreation area with comfortable furnishings in sufficient quantity to accommodate the number of children and adults receiving services [using it as shall be provided].

(3) Each bedroom in a domestic violence shelter shall:
   (a) Be equipped with a bed for each client, of adequate size, with suitable springs, mattress, pillow, and bedding; and
   (b) Have adequate closet space and individual drawer space.

(4) Each domestic violence [spouse-abuse] shelter and grounds shall be well maintained.

(5) Each domestic violence [spouse-abuse] shelter shall maintain a security system to provide for the physical safety of the client.

Section 5. Medical and Dental. The domestic violence [spouse-abuse] shelter shall assure that access to emergency medical and dental services are available within the community or within close proximity.

Section 6. Meals. The domestic violence [spouse-abuse] shelter shall provide clients with three (3) meals per day which shall consist of, each including foods from at least three (3) of the following five (5) basic food groups:
   (1) Grains;
   (2) Vegetables;
   (3) Fruits;
   (4) Dairy products; and
   (5) Meat and beans.

Section 7. Services. (1) The domestic violence [spouse-abuse] shelter shall maintain and provide services on a continuing basis and for as many hours as are necessary to meet the needs of an eligible person [person].

(2) Staff of the domestic violence [spouse-abuse] shelter shall apprise a client [client] of resources available from:
   (a) The domestic violence [spouse-abuse] shelter; and [or]
   (b) The community [by referral which may assist them in the solution of their problem].

(3) Upon entrance into the domestic violence [spouse-abuse] shelter, or if receiving a domestic violence [spouse-abuse] related service, domestic violence shelter staff shall obtain and record in client case record the following minimal information [shall be obtained and recorded in a permanent record]:
   (a) Name, date of birth, sex, address, marital status; and
   (b) Name [Names] and date of birth of an accompanying dependent [dependents]; and
   (c) Identification of reason for intake [Intake];
   (d) Upon entrance into the domestic violence shelter, or if receiving a domestic violence related service, domestic violence shelter staff shall obtain and record the following information in a client case record, if observed or needed:
      (a) [Or] Identification of physical injury;
      (b) [Or] Medical attention provided; and
      (c) [Or] Identification of physical condition or ailment which may impact [upon] services to be offered to the client; and
   (d) [Or] Prior contact with a spouse-abuse shelter,
   (e) Immediately following the gathering of the information required in subsections (3) and (4) of this section, domestic violence shelter staff shall report the information [shall be reported] to the offices of the cabinet [department] located within the county where the domestic violence [spouse-abuse] shelter exists.
   (f) This report shall constitute compliance with the provisions of KRS 620.030(2), [and] 209.030(2), and 209A.030(3) and (4).
   (g) Upon completion of the gathering of information as required in subsections (3) and (4) of this section, domestic violence shelter staff shall develop a service plan [shall be developed].

   (1) For each client; and
   (2) To establish [individual and accompanying dependents setting forth] a summary of services needed by the client [individual] and available within the domestic violence [spouse abuse] shelter and community.

(7) Domestic violence shelter staff shall document and maintain in the client's case record:
   (a) [Or] Referral of the client for services outside the domestic violence [spouse-abuse] shelter; and [shall be documented and maintained in the client's permanent case record];
   (b) Service coordination with other agencies [shall also be documented in the case record];
   (c) The domestic violence shelter shall:
      (a) Offer [(?] Daily program activities [shall be offered] with emphasis upon each client's physical, intellectual, and social needs; and
      (b) [Or] The domestic violence [spouse abuse] shelter shall have and enforce a policy which prohibits possession of weapons, alcohol, or nonprescribed drugs while in the shelter; and
   (c) Provide [Or] The domestic violence shelter shall keep client medication in a locked cabinet [for client medication storage];
      (1) Spouse abuse shelter staff shall not dispense nor administer medication but allow each client to take their own medication as prescribed.
      (2) The shelter staff shall keep a record of each medication taken by a client during their stay at the spouse abuse shelter.
   (d) [Or] Each client may use a personal cell phone or computer for a limited time, and
   (e) [Or] Each domestic violence [spouse abuse] shelter shall provide each client with a list of confidential support services.

(8) Each spouse abuse shelter shall:
   (a) Develop and implement procedures to provide for the movement to more appropriate accommodations for those clients who:
      1. [Or] Provide a client with shelter that is not suitable or adequate; or
      2. [Or] Abuse the domestic violence [spouse abuse] shelter; or
   (b) [Or] Each spouse abuse shelter shall establish written procedures to be given to each client upon entering the facility or for a referral to another location or
      1. The services to be rendered; or
      2. A method for handling client complaints [including]; [and]

   (9) An opportunity for the client to have access to the cabinet's [department's] grievance procedure for review in accordance with §22 KAR 1:320, Section 8; and
   (10) The cabinet's [department's] grievance procedure for review in accordance with §22 KAR 1:320, Section 8; and
   (11) The cabinet's [department's] grievance procedure for review in accordance with §22 KAR 1:320, Section 8; and
   (12) Each domestic violence [spouse abuse] shelter shall maintain and provide services on a continuing basis and for as many as are necessary to meet the needs of an eligible person [person].

(13) Each domestic violence [spouse abuse] shelter shall:
   (a) Ensure that services are available to clients [residents] in the area development district in which the agency is located;
   (b) Provide a copy of the service plan [shall be provided] to a client; and
   (c) Provide written procedures for the movement to more appropriate accommodations for those clients who:
      1. [Or] Refuse to allow access to domestic violence [spouse abuse] shelter services; or
      2. [Or] Refuse to comply with domestic violence [spouse abuse] shelter rules governing the safety of staff and clients; and
   (d) Each domestic violence [spouse abuse] shelter shall maintain and provide services on a continuing basis and for as many as are necessary to meet the needs of an eligible person [person].

(14) Each domestic violence [spouse abuse] shelter shall:
   (a) Ensure that services are available to clients [residents] in the area development district in which the agency is located;
   (b) Provide written procedures for the movement to more appropriate accommodations for those clients who:
      1. [Or] Refuse to allow access to domestic violence [spouse abuse] shelter services; or
      2. [Or] Refuse to comply with domestic violence [spouse abuse] shelter rules governing the safety of staff and clients; and
   (c) Provide written procedures for the movement to more appropriate accommodations for those clients who:
      1. [Or] Refuse to allow access to domestic violence [spouse abuse] shelter services; or
      2. [Or] Refuse to comply with domestic violence [spouse abuse] shelter rules governing the safety of staff and clients; and
   (d) Each domestic violence [spouse abuse] shelter shall maintain and provide services on a continuing basis and for as many as are necessary to meet the needs of an eligible person [person].
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(14) Each spouse abuse shelter shall develop and implement procedures for emergency and temporary domestic violence shelter closure.

(15) Each spouse abuse shelter shall maintain a record of reportable [unusual] incidents involving a client and [shall] forward a copy of the incident report to the cabinet or its designee.

(16) Each spouse abuse shelter shall develop and implement a plan for the provision of outreach services in counties of the area development district in which it is located.

(9) Domestic violence shelter staff shall not dispense nor administer medication, but allow each client to take their own medication as prescribed.

Section 8. Records. (1) A [Client] case record [records] shall be:
(a) Maintained on each client [individual or family unit] served by the domestic violence [spouse abuse] shelter during the time that the client [or family unit] is receiving services;
(b) Strictly confidential; and
(c) Shared in accordance with KRS 209A.070.

(2) Client case records of each agency shall be maintained as confidential and shall not be shared with persons outside the cabinet.

(2) Records of the cabinet or its designee [for Health and Family Services; Department for Community-Based Services] in the possession of an agency are strictly confidential and shall be shared with other individuals or organizations;
(a) Only as provided in KRS 203.140, 194A.060 [194A.060], and 620.050; and
(b) With the prior written permission of the cabinet [department].

(3) The cabinet [department] shall have access to the agency property and to records of services provided, including [but not limited to] agency financial and client case records for the purpose of auditing and monitoring.

(4) Domestic violence shelters shall keep client case records for six (6) years after the last day of service.

JAMES W. HOLSGINGER, JR., M.D., Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON, JR., Commissioner
APPROVED BY AGENCY: September 13, 2005
FILED WITH LBC: September 14, 2005 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2005, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by October 14, 2005, 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 close of business October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets the standards for state-funded domestic violence shelters.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standards for state-funded domestic violence shelters.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 209A.010 requires the secretary to promulgate administrative regulations to identify victims of domestic violence, abuse, or neglect inflicted by a spouse, and to provide for the protection of adults who choose to access those services. KRS 194A.050(1) requires the secretary to promulgate administrative regulations authorized by applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. This administrative regulation conforms to the content of the authorizing statutes by establishing performance standards for qualifying applicants of state funds related to domestic violence services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 209A.010 requires the secretary to promulgate administrative regulations to identify victims of domestic violence, abuse, or neglect inflicted by a spouse, and to provide for the protection of adults who choose to access those services. KRS 194A.050(1) requires the secretary to promulgate administrative regulations authorized by applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. This administrative regulation assists in the effective administration of the authorizing statutes by specifying performance standards for qualifying applicants of state funds related to domestic violence services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this administrative regulation: HB 298 2005 GA requires the cabinet to establish one domestic violence shelter in each area development district. This amendment provides clarity with regard to the standards for those domestic violence shelters, specifically the addition of: reportable incidents, information to be collected at intake, confidentiality and maintenance of records, physical facilities, and distinguishing governing and advisory boards and their responsibilities.
(b) The necessity of the amendment to the administrative regulation: Per HB 298 2005 GA, the cabinet is to establish one domestic violence shelter in each area development district. The amendment to this administrative regulation is necessary to clarify standards for domestic violence shelters, which receive state funds through the cabinet.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this existing administrative regulation conforms to the content of the authorizing statutes by clarifying the standards for state-funded domestic violence shelters.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by clarifying the standards for state-funded domestic violence shelters, to ensure compliance with HB 298 2005 GA.
(3) List the type and number of individuals, business organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect the Kentucky Domestic Violence Association and the 15 domestic violence shelters and related services located in each of the 15 area development 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: The Kentucky Domestic Violence Association and state-funded domestic violence shelters located in each of the area development districts will have a clearer understanding of the requirements established in this existing administrative regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional costs to the cabinet.
(b) On a continuing basis: No additional costs to the cabinet.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding provided to the Kentucky Domestic Violence Association and domestic violence shelters is from the Family Violence Prevention and Services Grant, Social Services Block Grant, Kentucky - 788 -
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General Funds and Temporary Assistance to Needy Families Block Grant.

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

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

(9) TIERING: Is tiering applied? Tieng is not applied, as this administrative regulation will be implemented statewide.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)


RELATES TO: KRS 209.455(4), 209.030(9)(f), 209.160(1), 209A 010-080, 45 C.F.R. 74.92
STATUTORY AUTHORITY: KRS 194.050(1), 209.030(1),(9), 209.160(1), (2), 209A 030(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050(1) requires the secretary of the Cabinet for Health and Family Services to formulate, promulgate, establish, and enforce throughout the commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(9)(f) requires the cabinet for Health and Family Services to provide protective services for adults except in cases where the adult refuses services. KRS 209.160(1) creates a trust and agency account to receive funds from the issuance of marriage licenses, and requires the cabinet to use these funds to provide protective shelter services for domestic violence [spouse-abuse] victims. KRS 209.160(2) requires the cabinet to designate one (1) nonprofit corporation in each area development district to serve as the service provider and regional planning authority for domestic violence shelter, crisis, and advocacy services in the district in which the designated provider is located. KRS 209.030(1) requires [authorizes] the cabinet to promulgate administrative regulations to effect the purposes of KRS Chapter 209 governing protective services to adults. KRS 209A 030(1) requires the secretary to promulgate administrative regulations to effect the purposes of KRS Chapter 209A governing the protective services to victims of domestic violence, necessary to protect adults. The function of this administrative regulation establishes [to-set-forth] the funding requirements necessary for domestic violence [spouse-abuse] shelters to receive funding.

Section 1. Definitions. (1) "Agency" means a private or public nonprofit incorporated organization, or organization in the process of obtaining nonprofit status;

(a) That has the capacity to provide domestic violence [spouse abuse] shelter and related services to a client; and
(b) With whom the cabinet or its designee contracts for services.

(2) "Annual plan and budget" means the annual application for funding submitted to the cabinet or its designee by each domestic violence [spouse-abuse] shelter.

(3) "Cabinet" means Cabinet for Health and Family Services.

(4) "Cash" means nonstate money or funds given to the agency;

(a) For use in the domestic violence [spouse-abuse] shelter program; and
(b) Which is not for use as a [need-to] match with other grants or contracts.

(5) "Certified expenditures" mean nonstate cash expenditures incurred by an [the] agency if expenditures are;

(a) Determined to be allowable, reasonable and necessary under federal, state, and local laws, including KRS 209.160, 45 C.F.R. Parts 74 and 92, where applicable; [state laws and administrative regulations] and

(b) [are] Not used to match another grant or contract [other grant or contracts]. Certified expenditures may be incurred by the agency whether public or private nonprofit, or may be certified on behalf of the provider by a third party which may also be a public or private nonprofit organization.

(6) "Client" means a;

(a) Domestic violence victim; and
(b) Dependent child of the domestic violence victim.

(7) "District" is defined by KRS 209.455(4).

(8) "In-kind contributions" means property or services which;

(a) Directly benefit the services purchased;
(b) [which] Are contributed by the agency or a third party without expenditure by the agency; and

(9) [which would have been] Are an allowable, reasonable and necessary cost in compliance with federal, state, and local laws, including KRS 209.160, 45 C.F.R. Parts 74 and 92, where applicable [compliance with state laws and administrative regulations]. If purchased by the agency.

(10) [(7)] "Match" means locally generated funds or expenditures as required to obtain state funding in the form of;

(a) Certified expenditures; or
(b) In-kind contributions; or
(c) Cash provided by or to a [a contract] agency.

(11) "Primary service provider" means an agency within each area development district,—[ADD], designated by the cabinet or its designee as the [primary-contractor and] focal point of service delivery for domestic violence [spouse-abuse] shelter and related services. The primary service provider’s area of jurisdiction is limited to those counties contained in such ADD.

(12) "Secondary-service provider" means an agency within an ADD other than the primary-service provider, which through contract with the primary-service provider or the cabinet provides domestic violence [spouse-abuse] shelters and related services to victims of spouse abuse and their dependent children. The secondary-service provider’s area of jurisdiction is limited to those counties contained in each ADD.

(13) "Service area" means the counties located within the ADD within which a primary-service provider or a secondary-service provider is located.

Section 2. General Funds. The cabinet or its designee shall annually allocate appropriated [4th-Allocation] general funds to cabinet-approved service providers for the operation of domestic violence [spouse-abuse] shelter services for each fiscal year shall be allocated annually for the operation of these services by the designated primary-service providers.

Section 3. [(9)] (9) Primary Service Provider. (1) (a) [Eligibility-] The cabinet or its designee shall approve [designate] one (1) [primary-contractor] service provider for each area development district [ADD] to receive an allocation of general funds in accordance with KRS 209.160(2).

(b) The approval [This designation] shall be in effect unless rescinded following a review of the agency’s performance and its annual plan and budget proposal for the upcoming year.

[p] (a) [The] The cabinet or its designee shall select a service provider after a determination that the service provider meets the standards set forth in 922 KAR 5:040.

(b) [Selection process]—Each primary-service provider shall be selected according to the cabinet’s predesignated contract review and selection process. Each selected agency shall submit a properly executed annual plan and budget proposal which shall indicate each agency’s capacity to provide domestic violence [spouse abuse] shelter and other services for a client.

(c) [Abused-spouses and their dependent children.] The application for funding shall:

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1. Be in the form and format prescribed by the cabinet or its designee [department];
2. Specify the type and kind of services the provider [it] proposes to perform, either as a provider or under subcontract;
3. Detail fiscal considerations;
4. Assure that the agency and subcontractors shall comply with applicable federal and state laws, including KRS Chapters 209, 209A, and 45 C.F.R. Parts 74 and 92, where applicable [administered, regulated, or provided];
5. Include a commitment to provide outreach services in counties of the area development district (ADD) in which it is located.

(c) Match. Each [primary] service provider shall provide funds at the rate of twenty-five (25) percent local match to seventy-five (75) percent state general fund dollars.
6. Of the required local match, five (5) percent shall be cash and the remainder may be provided in a combination of cash, certified expenditures, or in-kind contributions.
7. Certified expenditures may be:
   a. Incurred by the service provider;
   b. Certified on behalf of the service provider by a third party.
8. A match shall not be provided by a state funded domestic violence [spouse-abuse] program to or on behalf of another domestic violence [spouse-abuse] contractor.
9. A service provider may be subject to disallowances and reimbursement to the cabinet if the required local match is not documented by the provider.
10. (a) Service areas. The cabinet or its designee shall allocate general funds to the [primary] service provider [providers] in each area development district.
   (b) The service provider:
      1. Is limited to providing services to the area development district where the service provider is located; and
      2. May provide services to a client of another area development district if:
         a. Shelter space or services are available for an additional client of another area development district;
         b. An emergency situation, such as a temporary closure of another area development district’s domestic violence shelter, exists, of the ADDs;
   (3) Secondary service provider.
      (a) Eligibility criteria. An agency that is properly organized and has the capacity to provide spouse-abuse channer-related services in accordance with federal and state laws and administrative regulations may be selected to enter into a written-subcontract agreement with the primary service provider. If, after negotiations, the primary service provider and the applying agency find they cannot agree on a subcontract, and the applying agency can document the need for its services, the applying agency may then request that the department consider them for funding under the following conditions:
      1. The applying agency shall submit proof that the service is needed by both the primary service provider and the ADD community.
      2. The applying agency shall document its willingness to cooperate with other major service providers in the same ADD.
      3. The applying agency shall document its efforts to subcontract and the basis for failure to effect a subcontract with the primary service provider.
   11. (a) Selection process. After the department has received the required information from the applying agency, meetings shall be scheduled with the applying agency and the [primary] service provider to determine if the submitted information justifies the need for funds; and
      (1) The department shall consider the following:
      1. If the service is not needed or properly justified, a contract shall not be awarded.
      2. If the service is needed by the primary service provider and the applying agency cannot agree to subcontract, a contract may be awarded in accordance with the cabinet’s predesignated contract and review processes.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the funding requirements for domestic violence shelters.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the funding requirements for domestic violence shelters.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 209.030(9) creates a trust and agency account to receive funds from the issuance of marriage licenses and requires the cabinet to use these funds to provide protective shelter services for domestic violence victims. This administrative regulation conforms to the content of the authorizing statute by establishing the requirements for domestic violence shelters to receive funding.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 209.030(9) creates a trust and agency account to receive funds from the issuance of marriage licenses and requires the cabinet to use these funds to provide protective shelter services for domestic violence victims. This administrative regulation will assist in the effective administration of the statutes by establishing the funding requirements for domestic violence shelters.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this administrative regulation: HB 298 2005 GA requires the cabinet to establish 1 domestic violence shelter in each area development district. This administrative regulation establishes the funding requirements for domestic violence shelters. The amendment to this administrative regulation updates statutory references, removes secondary service provider language, clarifies allocations to and the area served by each domestic violence shelter and requirements regarding match and standards for a domestic violence shelter, and makes changes necessary to comply with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as a result of HB 298 2005 GA, which requires the cabinet to establish one domestic violence shelter in each area development district. This amendment clarifies the funding requirements regarding match and standards for a domestic violence shelter, and makes changes necessary to comply with KRS Chapter 13A.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this administrative regulation conform to the content of the authorizing statutes by clarifying the funding requirements for domestic violence shelters, to include the establishment of one domestic violence shelter in each area development district.
(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the statutes by clarifying the funding requirements of domestic violence shelters, to include the establishment of 1 domestic violence shelter in each area development district.

(3) List the type and number of individuals, business organizations, or state and local governments affected by this administrative regulation: The entities affected by the amendments to this administrative regulation include the Kentucky Domestic Violence Association and the 15 domestic violence shelters and related services located in each of the 15 area development 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: The domestic violence shelters and related services located in each of

the area development districts and the Kentucky Domestic Violence Association will have a clearer understanding of the funding requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional costs to the cabinet.
(b) On a continuing basis: No additional costs to the cabinet.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding provided to the Kentucky Domestic Violence Association and domestic violence shelters is from the Family Violence Prevention and Services Grant, Social Services Block Grant, Kentucky General Funds and Temporary Assistance to Needy Families Block Grant.

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

(9) TIERING: Is tiering applied? Tiering is not applied. Policy is applied in a like manner for all domestic violence shelters and related services across the state.
FINANCE AND ADMINISTRATION CABINET
Kentucky Gas Pipeline Authority
(New Administrative Regulation)

200 KAR 26:010. KGPA operating procedures.

RELATES TO: KRS 353.750-353.776
STATUTORY AUTHORITY: KRS 353.754(5)
NECESSITY: FUNCTION, AND CONFORMITY: The Kentucky Gas Pipeline Authority was created pursuant to KRS 353.750 to provide a financing mechanism for the construction, reconstruction, improvement, or repair of any gas pipeline or appurtenant facilities. KRS 353.754(5) provides that the authority shall promulgate administrative regulations for the conducting of its business and affairs. This administrative regulation establishes the operating procedures for the Kentucky Gas Pipeline Authority.

Section 1. Definitions. (1) "Full-time job" means a position filled by an employee (excluding contract or part-time employees) that the company projects will work, on an annual basis 1,820 hours.
(2) "KGPA" means the Kentucky Gas Pipeline Authority, created and established by KRS 353.750.
(3) "KPABAC" means the Kentucky Private Activity Bond Allocation Committee, created and established by KRS 103.285.
(4) "Project" is defined in KRS 353.750(5).

Section 2. Application Process. (1) Eligible projects may be financed by the issuance of industrial revenue bonds by the KGPA pursuant to an agreement between the KGPA and the applicant related to the project.
(2) Before filing an application requesting the issuance of industrial revenue bonds by the KGPA, an applicant shall contact:
(a) Bond counsel to determine if financing by the KGPA is feasible and any relevant federal tax issues associated with the issuance of any industrial revenue bonds for the project;
(b) The KPABAC if the bond issue qualifies as a private activity bond and the applicant intends to request an allocation of a portion of the state private activity bond volume cap;
(c) Potential underwriters, to receive a commitment to purchase the bonds, if the issue is to be publicly sold; or
2. Other purchasers, to receive a commitment to purchase the bonds, if the issue is to be privately placed; and
(d) Governmental entities that will be impacted by expected lost property tax revenues as a result of the proposed bond issue.
(3) An applicant requesting the issuance of industrial revenue bonds by the KGPA shall submit an application using the KGPA application form. The application shall be submitted to the KGPA at least ninety (90) days prior to the anticipated date of issuance of the industrial revenue bonds, and shall be accompanied by:
(a) A $500 nonrefundable application fee;
(b) Resolutions or other documents of support from governmental entities impacted by expected lost property tax revenues as a result of the proposed bond issue; and
(c) A KGPA New Bond Issue Report.

Section 3. Evaluation Criteria. The following criteria may be considered by the KGPA when evaluating a project application and issuance of industrial revenue bonds for the project:
(1) Number of new full-time jobs expected to be created or retained as a result of the project for which the bonds are to be issued;
(2) Average hourly wage expected to be paid for each full-time job created or retained;
(3) Employee benefits expected to be offered;
(4) Amount of capital investment being made in the project by the applicant;
(5) Unemployment rate in the county or counties of the proposed project;
(6) State tax incentive programs and grant or loan programs in which the applicant has previously participated with another project or is seeking to participate in with the proposed project;
(7) Whether the proposed project would be eligible to participate in a tax incentive, grant, or loan program offered under KRS Chapter 148 or 154;
(8) New tax revenues which the applicant anticipates will be produced by the project over the life of the bond issue, i.e. severance tax revenue, corporate income tax, sales tax, occupational tax, etc.;
(9) Approximate amount and percentage of state and local ad valorem taxes expected to be lost as a result of the applicant leasing all or a portion of the project from the KGPA;
(10) Whether the proposed project will result in an increase in current user rates; and
(11) Whether the rate structure will be regulated by the Kentucky Public Service Commission or any other public regulatory body.

Section 4. Approval Process. (1) The KGPA shall evidence its approval or disapproval of the proposed project and related bond issue through the adoption of a resolution authorizing the project and issuance, execution, and delivery of the bonds. The resolution shall also approve any related lease agreement, loan agreement, or similar agreement, and authorize the appropriate officials of the KGPA to negotiate the terms of and execute any such agreement. A copy of the resolution shall be sent to the applicant.
(2) Sale of the bonds shall not occur before receipt of the resolution.
(3) As a condition of approval of the proposed bond issuance, the KGPA shall require the execution and delivery of a lease agreement, loan agreement, or similar agreement between the applicant and the KGPA providing for or relating to the financing of the construction, reconstruction, improvement, or repair of the proposed project, if the applicant will be leasing all or a portion of the industrial project from the KGPA.
(4) Upon approval of the project by the KGPA and prior to any bonds being issued for the project:
(a) An applicant shall seek final approval by the applicable regulatory body or authority; and
(b) The listed entities shall review and approve the proposed bond issuance:
1. State Property and Buildings Commission (SPBC), pursuant to KRS 56.450;
2. Capitol Projects and Bond Oversight Committee, pursuant to KRS 45.810; and
3. Office of Financial Management in the Office of the Controller within the Finance and Administration Cabinet, pursuant to KRS 42.420.
(5) The Secretary of the Finance and Administration Cabinet shall certify that the issuance of revenue bonds in relation to the project and the terms of the issue shall not require an appropriation of state general funds, in accordance with KRS 56.975(5).
(6) The applicant shall complete a KGPA Bond Information Disclosure Form and submit it to the Office of Financial Management no later than five (5) days after the bond or note sale.

Section 5. Reporting Requirements. (1) By January 1 of each year, the KGPA shall make an annual report of its activities for the preceding fiscal year to the Office of the State Budget Director and to the Interim Joint Committee on Appropriations and Revenue. Each report shall set forth a complete operating and financial statement covering its operations during the fiscal year.
(2) The KGPA shall provide for an audit of its books and accounts to be made within ninety (90) days after the close of each fiscal year by certified public accountants, and the cost of the audit may be treated as a part of the cost of construction of the project.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "KGPA Application (8/05);"
(b) "KGPA New Bond Issue Report (8/05);" and
(c) "KGPA Bond Information Disclosure (8/05).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of the Secretary, Room 383 Capitol Annex, Frank-
fort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN R. FARRIS, Deputy Secretary
For R. B. RUDOLPH, JR., Chair
APPROVED BY AGENCY: September 7, 2005
FILED WITH LRC: September 8, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing and proposed amendment to the administrative regulation shall be held on October 26, 2005, at 10 a.m. in Room 386 Capitol Annex, 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 October 19, 2005, 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 October 31, 2005. 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: Kristen Webb, Legislative Director, Finance and Administration Cabinet, Office of the Secretary, Room 383 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristen Webb

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the operating procedures for the Kentucky Gas Pipeline Authority.
(b) The necessity of this administrative regulation: The Kentucky Gas Pipeline Authority was created pursuant to KRS 253.750 to provide a financing mechanism for the construction, reconstruction, improvement, or repair of any gas pipeline or appurtenant facilities. KRS 353.754(5) provides that the authority shall promulgate administrative regulations for the conducting of its business and affairs.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the operating procedures for the Kentucky Gas Pipeline Authority, in accordance with KRS 353.754.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the application and approval process for qualified projects.
(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 may affect local governments, school districts, and other special taxing districts (i.e., fire districts and library 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: There will be a potential for loss of property tax revenues for local governments and other taxing districts, and an increase in severance tax revenues for the state.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Minimal
(b) On a continuing basis: Minimal
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Appropriations to the Finance and Administration Cabinet.
(d) 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 increased funding will be necessary.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: A $500 nonrefundable application fee is established.
(f) TIERING: Is tiering applied? No, the procedures set out in this administrative regulation apply to all entities equally.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

(2015) 401 KAR 51:150. NOx requirements for stationary internal combustion engines.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.24-10-120, 224.24-120, 40 C.F.R. 51.121, 51.122, 40 C.F.R. 78, 97, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.24-10-120, 42 U.S.C. 7401-7671q

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. Pursuant to the federal NOx SIP Call, this administrative regulation provides for the regional control of nitrogen oxides (NOx) emissions by establishing requirements for large stationary internal combustion engines. This administrative regulation is not more stringent than the federal mandate.

Section 1. Definitions. (1) "Affected engine" means any stationary internal combustion engine that is:
(a) A Large NOx SIP Call Engine; or
(b) Any other stationary internal combustion engine that is subject to NOx control under a compliance plan pursuant to this administrative regulation.
(2) "Facility seasonal NOx 2007 tonnage reduction" means the total of the engine seasonal NOx 2007 tonnage reductions attributable to all large NOx SIP Call engines of an owner or operator.
(3) "Large NOx SIP Call Engine" means a stationary internal combustion engine identified and designated in the NOx SIP Call engine inventory as emitting more than one (1) ton of NOx per average ozone season day in 1997.
(4) "NOx potential to emit" means the maximum capacity of an engine to emit NOx under its physical and operational design or applicable permit condition for a given period of time. Any physical limitation on the capacity of a source's potential to emit an air pollutant, including air pollution control equipment or combustion modification, shall be treated as part of its design if the limitation is enforceable by the cabinet.
(5) "NOx SIP Call baseline period" or "baseline period" means the period beginning May 1, 1997, and ending September 30, 1997, inclusive.
(6) "NOx SIP Call baseline period utilization" means the amount of work performed by a NOx SIP Call engine during the baseline period in brake horsepower-hours (brhp-hr).
(7) "NOx SIP Call engine inventory" means the NOx emission inventory, compiled by the U.S. EPA, that includes:
(a) Technical amendments pursuant to 65 Fed. Reg. 11222, March 2, 2000; and
(b) The adjustment of the 2007 budget NOx control efficiency to eighty-two (82) percent for large gas-fired engines pursuant to 69 Fed. Reg. 21603, April 21, 2004.
(8) "Past NOx emission rate" means the emission rate of an affected engine in grams per brake horsepower-hour (gbrhp-hr), as determined by performance testing consistent with the requirements of 40 C.F.R. Part 60, Appendix A. If such performance test
data are not available, the rate:
(a) Shall be the uncontrolled emission rate for Large NOx SIP Call Engines; or
(b) Shall be determined by the cabinet on a case-by-case basis, using appropriate emission factors or data from the NOx SIP Call engine inventory

(9) "Projected 2007 NOx tonnage reduction" means the projected NOx reduction in tons during the 2007 control period, calculated as the difference between the 2007 base emissions and the 2007 budget emissions. The Projected 2007 NOx tonnage reduction may be corrected through an approved SIP revision.

(10) "Projected 2007 seasonal base NOx emissions" or "2007 base emissions" means the projected uncontrolled NOx emissions, in tons, for the 2007 control period as published in the NOx SIP Call Inventory. The 2007 base emissions may be recalculated through an approved SIP revision.

(11) "Projected 2007 seasonal budget NOx emissions" or "2007 budget emissions" means the projected controlled NOx emissions in tons, for the 2007 control period as published in the NOx SIP Call Inventory. The 2007 budget emissions may be recalculated through an approved SIP revision.

(12) "Projected 2007 Ozone Season utilization" or "2007 utilization" means the projected amount of work during the 2007 control period performed by a NOx SIP Call engine, calculated as the 1997 baseline utilization multiplied by the growth factor assigned to that engine in the NOx SIP Call Inventory.

(13) "Projected NOx emission rate" means the projected emission rate in grams per brake horsepower-hour after installation of controls on an affected engine.

(14) "Projected operating hours" means the projected actual number of hours of operation per ozone season for an affected engine.

(15) "Stationary internal combustion engine" means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than twelve (12) consecutive months. Any engine or engines that replace an engine at a site that is intended to perform the same or similar function as the engine replaced shall be included in calculating the consecutive time period.

Section 2. Applicability. This administrative regulation shall apply to the owner or operator of any Large NOx SIP Call Engine.

Section 3. Standard for Large NOx SIP Call Engines. On and after May 1, 2007, an owner or operator of an affected engine shall not operate the engine during a control period unless:
(1) The NOx emission rate for a Large NOx SIP Call Engine is reduced from the Past NOx emission rate by at least eighty two (82) percent; or
(2) The owner or operator complies with the requirements in Section 4 of this administrative regulation.

Section 4. Compliance Plan. On and after May 1, 2007, an owner or operator shall not operate a Large NOx SIP Call Engine during the control period unless the owner or operator complies with the requirements of a compliance plan or reduces NOx emissions from that engine in accordance with Section 3(1) of this administrative regulation.

(1) The compliance plan shall:
(a) Be approved by the cabinet;
(b) Include all affected engines at an individual facility, several facilities, or at all facilities located in Kentucky that are under the control of the same owner or operator;
(c) Be submitted to the cabinet by May 1, 2006;
(d) Include credit for decreases in NOx emissions from Large NOx SIP Call Engines in Kentucky due to NOx control equipment. The owner or operator shall also include credit for decreases in NOx emissions from other affected engines in Kentucky due to NOx control equipment that is not reflected in the 2007 Ozone Season Base NOx Emissions in the NOx SIP Call Engine Inventory; and
(e) Provide the following information for each affected engine:

1. A list of engines subject to the plan that includes:
   a. Engine manufacturer;
   b. Engine model number;
   c. Facility location address; and
   d. Facility identification number;
2. The projected ozone season hours of operation and supporting documentation;
3. A description of the NOx emissions control installed, or to be installed, and documentation to support the Projected NOx Emission Rate;
4. The Past and Projected NOx Emission Rates in grams per brake horsepower-hour;
5. A numerical demonstration that the emission reductions obtained from all engines included in the compliance plan will be equivalent to or greater than the owner or operator's Facility Seasonal NOx 2007 Tonnage Reduction, based on the difference between the Past NOx Emission Rate and the Projected NOx Emission Rate, multiplied by the Projected Operating Hours for each affected engine, and considering credit according to subsection (1)(d) of this section; and

(2) The Projected NOx Emission Rate in grams per brake horsepower-hour for each affected engine shall be included in a federally-enforceable permit.

Section 5. Compliance Demonstration. (1) Pursuant to the compliance plan required in Section 4, NOx emission reductions shall be calculated according to the following criteria:
(a) For a Large NOx SIP Call Engine to which a control device is added or a combustion modification is made after September 30, 1997, the NOx emission reductions shall equal the difference, in tons, between the affected engine's projected 2007 base emissions and the affected engine's seasonal potential to emit at the controlled emission rate during the control period.
(b) For an affected engine that is removed from service after September 30, 1997, and the facility's operating capacity, in brake horsepower-hour, equivalent to the portion of the removed affected engine's projected utilization is replaced, in part or in total, during a control period;
   1. By a NOx emitting device installed after September 30, 1997, the NOx emission reductions shall be the difference, in tons, between the removed affected engine's projected 2007 base emissions and the replacement device's seasonal potential to emit for its operating capacity, in tons, equivalent to the portion of the removed affected engine's projected utilization that the device will replace, not to exceed 100 percent; or
   2. By a device that does not emit NOx installed after September 30, 1997, the NOx emission reductions shall be the removed affected engine's projected 2007 base emissions, multiplied by the percentage projected from utilization of the replacement device, not to exceed 100 percent; or
   3. By a device that does not emit NOx, and a NOx emitting device is installed at the removed affected engine's facility after the date that the device that does not emit NOx was installed, the NOx emission reductions shall be the difference, in tons, between the removed affected engine's projected 2007 base emissions, and the NOx emitting device's seasonal potential to emit for its operating capacity, in tons, equivalent to the portion of the removed affected engine's projected utilization that it will replace, not to exceed 100 percent.

(2) The following shall not be considered NOx emission reductions for compliance with this administrative regulation:
(a) A restriction on an affected engine's hours of operation during a control period, including a prohibition from operating;
(b) A NOx emission limitation enforceable by the cabinet placed upon an affected engine to which no control device was added or combustion modification made after September 30, 1997;
(c) The removal of an affected engine from service if that affected engine is placed into service at another location within Kentucky; or
(d) NOx emission reductions achieved at a facility that is not owned or operated by the person responsible for demonstrating compliance with this administrative regulation.

(3) Demonstrability and enforceability of NOx emission reduc-
tions.  
(a) NOx emission reductions, calculated in accordance with subsection (1)(a) or (b) of this section, shall be demonstrable and enforceable if: 

1. An hourly NOx emission limitation unit, grams per brake horse power-hour, is included in a permit enforceable by the cabinet for the affected engine or replacement device that is to be operated during a control period; 
2. The hourly NOx emission limitation is equal to the hourly emission rate used to calculate the NOx potential to emit for the affected engine or replacement device in the compliance plan; and 
3. A performance test conducted in accordance with Section 6 of this administrative regulation determines that the affected engine or the replacement device is capable of complying with the hourly NOx emission limitation. 

(b) For any affected engine removed from service, NOx emission reductions calculated in accordance with subsection (1)(b) of this section shall be demonstrable and enforceable if the applicable permit has been modified or revoked, so that the affected engine's authorization to operate ceases on or before the first day of the control period for which NOx emission reductions would be credited. 

SECTION 6. Monitoring Requirements. An owner or operator of an affected engine shall: 

(1) Complete an initial performance test according to the requirements codified in Appendix A to 40 C.F.R. Part 60, following the installation of emission controls required to achieve the emissions limits in Section 3(1) of this administrative regulation. 
(2) Perform periodic monitoring to yield reliable data from the relevant time period that is representative of a source's compliance with the emission limits in Section 3(1) of this administrative regulation. Periodic monitoring shall include either: 
(a) Performance tests consistent with the requirements of Appendix A to 40 C.F.R. Part 60, or portable monitors using ASTM D6522-00, incorporated by reference in Section 9 of this administrative regulation; 
(b) A parametric monitoring program that specifies operating parameters and their ranges that will provide that each affected engine's emissions are consistent with the provisions of Section 3 of this administrative regulation; 
(c) A predictive emissions measurement system that relies on automated data collection from instruments; or 
(d) A continuous emission monitoring system that complies with 40 C.F.R. Part 60 or Part 75. 

SECTION 7. Recordkeeping Requirements. An owner or operator subject to this administrative regulation shall: 

(1) Maintain all records necessary to demonstrate compliance with the provisions of this administrative regulation for a period of two (2) calendar years after the affected engine is located, and provide the records, upon request, to the cabinet and the U.S. EPA; 
(2) Maintain the following records for each affected engine: 
(a) Identification and location of each affected engine; 
(b) Calendar date of record; 
(c) Number of hours the affected engine is operated during each control period compared to the Projected Operating Hours; 
(d) Type and quantity of fuel used, and 
(e) Results of all compliance tests. 

SECTION 8. Reporting Requirements. An owner or operator subject to the provisions of this administrative regulation shall submit the required reports, compliance plans, and compliance test results to: 

(1) Manager, Permit Review Branch, Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382; and 
(2) The appropriate Regional Office of the Division for Air Quality as follows: 
(a) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285; 
(b) Bowling Green Regional Office, 1508 West Avenue, Bowling Green, Kentucky 42104, (270) 745-7475; 
(c) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923; 
(d) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 433-6022; 
(e) London Regional Office, 875 South Main Street, London, Kentucky 40741, (606) 878-0157; 
(f) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 667-7304; or 
(g) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 899-8468. 


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, Monday through Friday, 8 a.m. to 4:30 p.m. 

(3) Copies are available for sale from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania, 19428-2959, telephone (610) 832-5855, facsimile (610) 832-9555, and the Internet http://www.astm.org/. 

JOHN W. CLAY, Deputy Secretary 
For LAJUANA S. WILCHER, Secretary 
APPROVED BY AGENCY: September 9, 2005 
FILED WITH LFC: September 12, 2005, at noon 
PUBLIC HEARING: October 18, 2005. 
PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2005, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least 5 workdays prior to the hearing.

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email gerry.ennis@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:
(2) What this administrative regulation does; This administrative regulation establishes the requirements for the control of nitrogen oxides (NOx) emissions from any stationary internal combustion engine that is a large NOx SIP C3 engine or other stationary internal combustion engine that is subject to NOx control under a compliance plan.
(2) The necessity of this administrative regulation; This admin-
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3. Minimum or uniform standards contained in the federal mandate. The federal regulations require large stationary internal combustion engines to reduce NOx emissions by 82%.
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. This administrative regulation will not impose stricter standards, or additional or different responsibilities or requirements than those required by the federal mandate.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)

823 KAR 1:005. Exempt organizations.

RELATES TO: KRS 238.535
STATUTORY AUTHORITY: KRS 238.515(9), 238.535(1)-(7)
FUTURITY, FORM, AND CONFORMITY: KRS 238.535(1)-(7) authorize issuance of an exemption from licensing requirements to organizations meeting all licensing requirements when no special limited charitable games or pulltabs are played and annual gross receipts do not exceed $25,000. This administrative regulation establishes the procedure for granting an exemption.

Section 1. Form for Exemption. (1) An organization shall submit a complete, accurate, and verifiable form at least thirty (30) days prior to the expected date of gaming.
(2) The form shall not be considered complete until all deficiencies are resolved.
(3) In the event the organization does not respond to any deficiency request within thirty (30) days, the form shall be deemed withdrawn, and the organization shall not game.
(4) If the organization has submitted a complete form, and meets the requirements for licensure prescribed in KRS 238, the office shall issue a "Notification of Exemption."
(5) The organization shall not be required to file an additional form with the office if the gaming activities of the charitable organization remain exempt.
(6) The organization shall notify the office of any changes in the information contained on the form within thirty (30) days.
(7) An organization possessing a "Notice of Exemption" shall file an annual report with the office before December 31 of each year. This report shall be filed on Form CG-EFR, "Exempt Organization Annual Financial Report."

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference: (a) Form CGE, "Form for Organization Crossings Under $25,000 (Exemption) (5/05)"; and (b) Form CG-EFR, "Exempt Organization Annual Financial Report (09/02)."
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-2639, 8 a.m. to 4:30 p.m., Monday through Friday.

CHRISTOPHER L. LILLY, Commissioner and Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, five working days

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
On April 21, 2004, Phase II of the federal NOx SIP Call was published in the Federal Register (69 FR 21604). The Phase II revisions include standards for controlling NOx emissions from stationary internal combustion engines subject to emission limitations or NOx control under a compliance plan.
2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

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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 this public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighth- ton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5526, fax (502) 573-5629.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets the fees for exempt organizations and replaces 820 KAR 1:070 which will be repealed.

(b) The necessity of this administrative regulation: This administrative regulation is needed to clarify the rights and responsibilities of organizations who participate in charitable gaming on a limited basis.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(9) requires the office to promulgate regulations which are necessary to carry out the purposes of KRS 238, et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation replaces an older regulation and provides more clear and concise requirements for the organizations so that they can better understand the regulations.

(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 new regulation and the repeal of the old regulation provide more clarity to the organizations regarding their requirements.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to clarify the requirements of organizations that game on a limited basis.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) requires the office to promulgate regulations which are necessary to carry out the purposes of KRS 238, et seq.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is needed to clarify the requirements of organizations that game on a limited basis.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 500 charitable organizations.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This regulation clarifies previous requirements and should not impact the regulated community.

(5) Provide an estimate of how much it will cost to implement this 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: Charitable gaming is funded by the regulated community.

(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 fee increase will be necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all charitable organizations that game on a limited basis.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)

820 KAR 1:016. Distributor and manufacturer licensees.

RELATES TO: KRS 238.530
STATUTORY AUTHORITY: KRS 238.515(1), (2), (3), (4), (9); 238.530(1), (2), (3), (5), (6), 238.555(3)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 requires the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.525(1) requires the office to issue an annual or biennial license to a qualified applicant and to establish fees not to exceed the amounts established in KRS 238.530(1) and (2). This administrative regulation establishes the fees and procedures for annual licensure of distributors and manufacturers.

Section 1. Application for Licensure. (1) An applicant for a distributor's or manufacturer's license shall submit a complete, accurate, and verifiable application at least sixty (60) days prior to the expiration of its license or expected date of operation.

(2) An application shall not be considered complete until all deficiencies are resolved to the satisfaction of the office.

(3) In the event the applicant does not respond to any deficiency request within thirty (30) days, the application shall be deemed withdrawn.

(4) The office may issue a license if the applicant has met the requirements for licensure set forth in KRS 238.530, paid all fees and fines, filed all reports required, filed a financial plan if required, and complied with all terms and conditions of any applicable settlement agreement or probateary terms.

(5) The persons required to be fingerprinted are the chief executive officer, the chief financial officer, and anyone with a ten (10) percent or greater financial interest in the licensee.

(6) In the event of a denial by the office of a license application, the applicant shall be prohibited from reapplying for a period of one (1) year from the date of denial.

Section 2. Information Required on License. Licenses issued by the Office of Charitable Gaming shall clearly state the:

(1) Name of the licensee;

(2) Physical address of the licensee;

(3) Date of issuance of the license;

(4) Expiration date of the license;

(5) Type of license issued (manufacturer or distributor); and

(6) Address of the Office of Charitable Gaming.

Section 3. Fees for Licensure. (1) The annual license fees for each license issued shall be $1,000.

(2) A processing fee of twenty-five (25) dollars shall accompany each application for licensure. The twenty-five (25) dollar processing fee shall be credited to any balance due on the license at the time it is issued.

(3) An annual license shall not be issued until the annual license fee is paid in full.

(4) The annual license shall be effective for one (1) year from the date of issuance.

Section 4. Requirements of a Distributor. (1) Any payment from an owner, employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming distributor to an owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed facility shall be considered prima facie evidence of influence in violation of KRS 238.555(3)(h).
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(2) An owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming distributor shall not own, operate, or be employed by the concession stand in a charitable gaming facility, whether the concession stand is operated by the facility or an independent contractor.

(3) Pulltabs or bingo papers that are damaged shall not be sold and shall be destroyed by burning, shredding, or defacing in some manner to prevent their reuse. The distributor shall list all products destroyed by date of destruction and serial number on the quarterly report.

(4) A distributor shall maintain a separate bank account for the operation of the distributorship that is not commingled with a personal account or another business account. If the licensee owns multiple distributorships, separate bank accounts shall be maintained for each one (1).

(5) Any payments received from a license charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account.

Section 5. Requirements of a Manufacturer. A licensee who does not receive payment in full from a distributor within sixty (60) days of the delivery of charitable gaming supplies and equipment shall notify the office of the delinquency in writing by letter stating the name and license number of the delinquent distributor.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form CG-2, "Application for a Distributor's License (05/05);" and

(b) Form CG-3, "Application for a Manufacturer's License (05/05)."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-2639, 8 a.m. to 4:30 p.m., Monday through Friday.

CHRISTOPHER L. LILLY, Commissioner and Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5525, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chns Lilly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets out additional requirements for a distributor to provide charitable gaming supplies in Kentucky.

(b) The necessity of this administrative regulation: This admin-

istrative regulation is needed so that the requirements and prohibi-
tions of possessing a license to provide gaming supplies in Ken-
tucky are clarified for distributors.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(1) requires the office to license distributors. KRS 238.515(2) provides that the office establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facili-
ties. KRS 238.515(3) requires the office to promulgate regulations which are necessary to carry out the purposes of KRS 238, et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is needed so that the requirements and prohibi-
tions of possessing a license to provide gaming supplies in Ken-
tucky are clarified for distributors.

(2) If this is an amendment to an existing administrative regu-
lation, 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 administra-
tion of the statutes: N/A

(e) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this adminis-
trative regulation: This regulation will affect approximately 30 dis-

tributors.

(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: This regulation more clearly sets forth the requirements of the statute regarding the operation of a charitable gaming distributorship in Kentucky. It will clarify the existing requirements.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implemen-
tation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.

(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 fee in-
crease will be necessary to implement this regulation.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all distributors.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)

820 KAR 1:07. Licensing Inspections.

RELATES TO: KRS 238.530, 238.535, 238.555

STATUTORY AUTHORITY: KRS 238.515(1), (2), (9), 238.530(1), (2), (4), (5), 238.535(6), (9), 238.555(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.530, 238.535, and 238.555 authorize the office to license charitable organizations, facilities distributors, and manufacturers. This admin-

istrative regulation establishes the criteria to be used in verifying the information contained in the application.

Section 1. (1)(a) An applicant for an organization license or exemption shall be able to demonstrate their establishment and reasonable progress by independent and verifiable information. This information may include contacts or leases, utility bills, records maintained by the parent organization, bank records, and any other records that are appropriate.

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(b) Upon inspection, an applicant for an organization license or exemption shall be able to demonstrate their maintenance of an office by copies of the business records, including the articles of incorporation and by-laws, if any, the tax forms, the check book and bank statements, and any other records expected to be kept by that type of organization. The organization should also be able to demonstrate that the persons who would avail themselves of their organization have a means of contacting them.

(2) An applicant for a facility license should be able to demonstrate that it is the entity that is operating the facility and that they do not have any prohibited relationships with organizations, distributors, or manufacturers. This may include an inspection of their office including contracts, required reports, checkbook, bank accounts, and any other records regarding the operation of the facility.

(3)(a) An applicant for a distributor's or manufacturer's license shall be able to demonstrate prior to licensing that they manufacture or distribute gaming supplies from the locations stated on their license. This may include an inspection of those locations and a demonstration or explanation of their ability to track gaming supplies and maintain the appropriate records.

(b) An applicant for a distributor's or manufacturer's license shall be responsible for all costs incurred by the office personnel associated with the inspection of the applicant's main office and any and all business locations indicated on the application or subsequent additional locations. Prior to the scheduled location inspection(s), the office will provide the applicant a written estimate of all costs. These costs may include transportation, lodging and the government per diem rate for all personnel required to conduct the location inspection as determined by the office. Any questions or concerns related to the written estimate must be directed to the office, in writing, prior to the location inspection.

(4) These inspections shall be completed by appropriate office personnel who shall file a report.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: September 6, 2005

FILED WITH LRC: September 12, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601.

Public Notice is hereby being published to advise all persons interested in promoting the public welfare that all persons interested in the public welfare have an equal opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes that the office will conduct field inspections of the licensees office locations to verify information contained in the license application. It also sets forth what information the office will look at to verify the information in the application.

(b) The necessity of this administrative regulation: This administrative regulation is needed so that the licensees will know what information the office will examine in order to verify the information contained in the license application.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) requires the office to license organizations, facilities, distributors, and manufacturers. KRS 238.515(9) requires the office to promulgate regulations which are necessary to carry out the purposes of KRS 238, et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is needed so that the office will be able to inspect the office locations of the licensees to verify information contained in the application.

(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 regulation will affect approximately 700 organizations, 70 facilities, 30 distributors, and 30 manufacturers.

(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: The licensees will know what information is necessary to maintain in order to verify the information contained in the licensing application.

(5) Provide an estimate of how much it will cost to implement this 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: Charitable gaming is funded by the regulated community.

(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 fee increase will be necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all licensees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming

New Administrative Regulation

820 KAR 1:028. Late fees.

RELATES TO: KRS 238.530, 238.550(5), 238.555, 238.570(1)
STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.530(5), 238.550(5), 238.555(5), 238.560(3), 238.570(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.560(3) authorizes the office to take administrative action against any person for any violation of the provisions of KRS Chapter 238 and the regulations promulgated thereunder. This administrative regulation establishes the late fees for filing the quarterly reports or paying the required fee late, or for the failure to file the quarterly report or pay the required fee.

Section 1. Late fee. (1) If the quarterly report or any portion thereof is not filed when due, and if any required fee is not remitted when due, the penalty shall be as follows:

(a) For the first offense, a fine of twenty-five ($25) dollars per day, not to exceed twenty-five ($25) dollars per quarter, shall be imposed on the licensee until the complete quarterly report and any required fee has been received by the office;
(b) For a second offense, a fine of $100 per day, not to exceed $1,000 dollars or quarter, shall be imposed on the licensee until the complete quarterly report and any required fee has been received by the office, and

(c) For a third or subsequent offense, the license shall be revoked.

(2) The fine imposed in subsection (1) of this section shall be paid:

(a) Within ten (10) days of receipt of an invoice from the office; and

(b) By check made payable to the "Kentucky State Treasurer". If the licensee is a charitable organization this check must be drawn on the gaming account.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the circumstances that late fines will be imposed.

(b) The necessity of this administrative regulation: This administrative regulation is needed so that the agency can receive the reports and fees in a timely fashion.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.560 allows the office to levy a fine if reports and fees are filed late.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is needed so that the office can set forth the conditions for the imposition of late fines.

(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: Previously, there were late fine provisions in several regulations. They were all brought together in 1 regulation for simplicity. Also, the regulation added an additional requirement. It will change the existing regulation in that there was previously no penalty imposed on an organization for filing a late report, only for filing a late fee. Now they are penalized if the report is late. It also increases the penalty for a subsequent late report.

(b) The necessity of the amendment to this administrative regulation: Previously, late fines were set forth in several different regulations. This regulation combines all provisions regarding late fines in 1 regulation to make it easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: It is required so that the agency can enforce the filing of reports and payment of fees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist, because it clarifies the terms under which a late fine will be imposed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 700 organizations, 30 distributors, and 70 facilities.

(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: Since it is not a major change to an existing regulation it should not impact the licensees.

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

(a) Initially: None

(b) On a continuing basis: None

(5) What is the source of funding for the implementation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.

(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 fee increase will be necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all licensees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)

820 KAR 1:029. Facility licensees.

RELATES TO: KRS 238.555
STATUTORY AUTHORITY: KRS 238.515(2)(d), (4), (9), 238.530(3), 238.555(1), (2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) requires the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities. This regulation establishes the procedures for the licensing of facilities.

Section 1. Application for Licensee. (1) An applicant for a facility license shall submit a complete, accurate, and verifiable application at least sixty (60) days prior to the expiration of its license or expected date of the operation of the facility.

(2) An application shall not be considered complete until all deficiencies are resolved to the satisfaction of the office.

(3) In the event the applicant does not respond to any deficiency request within thirty (30) days, the application shall be deemed withdrawn.

(4) The office may issue a license if the applicant has met the requirements for licensure set forth in KRS 238.555, paid all fees and fines, filed all reports required, and complied with all terms and conditions of any applicable settlement agreement or probationary terms.

(5) For facility applicants, the persons required to be fingerprinted are the chief executive officer, the chief financial officer, and anyone with a ten (10) percent or greater financial interest in the licensee.

(6) In the event of a denial by the office of a license application, the applicant shall be prohibited from re-applying for a period of one (1) year from the date of denial.

Section 2. Information Required on License. Licenses issued by the Office of Charitable Gaming shall clearly state the

(1) Name of the licensee;

(2) Physical address of the licensee;

(3) Address of the gaming facility, if different;

(4) Date of issuance of the license;

(5) Expiration date of the license;
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(5) Type of license issued; and
(7) Address of the Office of Charitable Gaming.

Section 3. Fees for Licensure. (1) The annual license fee for a charitable gaming facility having no more than eighteen (18) session per week shall be $2,500. The annual license fee for a charitable gaming facility having no more than eight (8) session per week shall be $1,250.

(2) A processing fee of twenty-five (25) dollars shall accompany each application for licensure. The twenty-five (25) dollar processing fee shall be credited to any balance due on the license at the time it is issued.

(3) An annual license shall not be issued until the annual license fee is paid in full.

(4) The annual license shall be effective for one (1) year from the date of issuance.

(5) A facility license shall be issued based on location of the gaming facility.

Section 4. Requirements of Licensee. (1) Any payment from an owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming distributor to an owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed facility shall be considered prima facie evidence of influence in violation of KRS 238.555(3)(h).

(2) An owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming distributor shall not own, operate, or be employed by the concession stand in a charitable gaming facility whether the concession stand is operated by the facility or an independent contractor.

(3) If a licensed organization also possesses a facility license and rent is charged to other organizations that game in the facility, then the facility shall charge its own organization rent equivalent to the amount it would charge another organization for the session(s) rented.

(4) A facility shall be permitted to list the names, license numbers, and gaming sessions of the organizations that game at that facility on the facility Web site provided there is no charge to the organizations for the listing.

(5) If a licensed charitable gaming organization contracts with a facility to operate the concession stand, the members of that organization that volunteer at the concession stand may volunteer to work for their own gaming session, but may not volunteer for the game of any other organization that games at that facility.

(6) A facility shall maintain a separate bank account for the facility operation that is not commingled with a personal account or another business account. If the licensee owns multiple facilities, a separate bank account shall be maintained for each 1. If separate businesses are operated out of the facility including a check cashing service or a concession stand, each business shall have a separate account.

(7) Any payments received from a licensed charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account.

Section 5. Incorporation by Reference. (1) Form CG-4, "Application for a Facility License (05/05)" is incorporated by reference.

(2) This form may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-2639, 8 a.m. to 4:30 p.m., Monday through Friday.

CHRISTOPHER L. LILLY, Commissioner and Acting Executive Director

JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: September 6, 2005

FILED WITH LRC: September 12, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by Tuesday, October 18, 2005, 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 be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets forth the requirements and procedure for a facility licensee to obtain a license and operate the facility.

(b) The necessity of this administrative regulation: This administrative regulation is needed so that the facility will better understand how to comply with the law.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the office will establish and enforce reasonable standards of the operation of a charitable gaming facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth most all of the requirements, except for filing reports, in 1 place which will make it easier to understand for the licensee.

(e) 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: Previously, the licensing requirements for facilities were set forth in a general licensing provision. The licensing requirements for each type of licensee were separated into a regulation pertaining only to them to make the requirements easier to understand and find. Additional requirements were also placed in this regulation to clarify for the licensee the statutory requirements.

(b) The necessity of the amendment to this administrative regulation: The regulation makes the requirements of operating a charitable gaming facility easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: It is required so that the agency can enforce the statutory requirements of operating a charitable gaming facility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist, because it clarifies the terms under a charitable gaming facility can be operated.

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 70 facilities.

(3) 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: There should be very little impact since the requirements have not been changed but only clarified.

(4) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: None
(b) On a continuing basis: None

(5) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.

(6) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regulation, if any, or by the change if it is an amendment: No fee increase will be necessary to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all facilities.

ENIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(Repealer)


RELATES TO: KRS 238.535(1)-(7), 545(1), (2)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9),
238 535(1), (2), 238.545(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: 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 repeals 820 KAR 1:030, 1:040, and 1:070, which are no longer required, because the requirements are duplicated in 820 KAR 1:032, 1:034, 1:036, 1:042, 1:044, 1:046, and 1:005. The administrative regulations were moved and separated for ease of administration and understanding by the regulatory community.

Section 1. The following administrative regulations are hereby repealed:
(1) 820 KAR 1:030, Charity game ticket standards;
(2) 820 KAR 1:040, Bingo standards; and
(3) 820 KAR 1:070, Exempt activities.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chns Lilly
(a) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 820 KAR 1:030, 1:040, and 1:070.
(b) The necessity of this administrative regulation: This administrative regulation repeals these regulations since the requirements are now set forth in different regulations.
(c) How does this administrative regulation conform to the content of the authorizing statutes: 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. These administrative regulations are no longer necessary; and therefore, the office wishes to repeal them.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will remove administrative regulations that are no longer needed.
(e) 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
(f) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation should not effect any entities. It only repeals a repetitive provisions.
(g) 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: There should be very little impact, since the requirements have not been changed but placed in different regulations for easier understanding.
(h) Provide an estimate of how much it will cost to implement this regulation:
(i) Initially: None
(j) On a continuing basis: None
(k) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Chantable gaming is funded by the regulated community.
(l) 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 fee increase will be necessary to implement this regulation.
(m) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(n) TIERING: Is tiering applied? Tiering is not applied, because this regulation repeals another regulation.

ENIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)

820 KAR 1:032. Pulltab construction.

RELATES TO: KRS 238.545(1), (2)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9),
238 545(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(2) requires the office to establish standards for pulltab construction, distribution and rules of play. This administrative regulation establishes standards for the construction and distribution of pulltabs.

Section 1. Conformity of Pulltabs. (1) A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky only those pulltabs conforming to the requirements of this administrative regulation.
(2) A licensed charitable organization shall sell to the public only those pulltabs conforming to the requirements of this administrative regulation.

Section 2. Pulltab Construction Standards. (1) Pulltabs shall be constructed so that the concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the pulltab using a high intensity lamp of up to and including
500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, printed, glued, cut and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each pulltab in a deal shall bear the same serial number. If a seal card is used with a pulltab deal, the seal card shall bear the same serial number as each pulltab. Only one (1) serial number shall be used in a deal. A serial number used in a deal of pulltabs shall not be repeated by the same manufacturer on that same manufacturer's form number within a three (3) year period.

(4) If the pulltab utilizes a window, the numbers or symbols on the pulltab shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) It shall not be possible to distinguish winning pulltabs from losing tickets through variations in printing graphics or colors, including those involving different printing plates.

(6) All winning pulltabs shall have at least one (1) winning protection feature. In addition, all winning pulltabs that entitle a player to an instant prize of greater than twenty (20) dollars must include an additional form of winner protection. Numerical ticket with colored winning numerals are not required to have secondary winner protection.

(7) All pulltabs shall be glued on the window edges and between each window. The glue shall be of sufficient strength and type to prevent the separation or delamination of the pulltab. For banded tickets, the glue must be of sufficient strength and quality to prevent the separation of the band from the ticket.

(8) The window sits on each break open ticket shall be perforated on at least three cut sides. The best shall be of a sufficient thickness or strength to prevent unauthorized peering under the windows and so that unauthorized peering under the windows can be detected. It shall be possible to detect all potential winning tickets from variations to the size or the appearance of a cut edge of the pulltab comprising a particular game.

(9) The minimum information that shall be printed on an unopened pulltab with an overall area of two and five-tenths (2.5) square inches or more must be:

(a) The name of the manufacturer, or its distinctive logo;
(b) The name of the game;
(c) The manufacturer's form number;
(d) The price per individual pulltab;
(e) The unique minimum five (5) digit game serial number, printed on the game information side of the pulltab; and
(f) The number of winners and respective winning numbers or symbols, and specific prize amounts.

(10) A pulltab with an overall area of at least one and six tenths (1.6) square inches unopened but less than two and five tenths (2.5) square inches unopened is not required to contain the information in subsection (9)(a) of this section.

(11) A pulltab with an overall area of less than one and six tenths (1.6) square inches unopened is not required to contain the information in subsection (9)(b), (c), (d), or (f) of this section.

Section 3. Randomization. (1) Winning pulltabs shall be distributed and mixed among all other pulltabs in a deal to eliminate any pattern between deals, or portions of deals. The pulltab deal shall be assembled so that the winning pulltabs cannot be distinguished. Winning tickets shall be evenly distributed throughout in a random fashion. Banded tickets packaged in bags, rather than boxes, are also subject to these requirements.

Section 4. Packaging and Distribution. (1) Each deal's package, box, or other container shall be sealed or taped at every entry point at the manufacturer's factory with a tamper resistant seal or tape. The seal or tape shall be visible under the shrink-wrap or from outside the container and must be of such construction as to guarantee that should the container be opened or otherwise tampered with, evidence of the opening or tampering would be easily detected. The seal or tape shall include a warning to the purchaser that the deal may have been tampered with if the package, box or other container is received by the purchaser with the seal or tape broken. If the deal is packaged in a plastic bag the entry point must be completely heat-sealed. The warning may be imprinted in the plastic.

(2) A deal's serial number shall be clearly and legibly placed on:
(a) The outside of the deal's package, box or other container;
or
(b) On the inside of the deal's package, box or other container if it is clearly visible from the outside of the package, box, or other container.

(c) Manufacturers must print or affix to the outside of the package or container of pulltabs or include inside the package or container, in bold print of sufficient size to be easily read, a message that states substantially the following: "Charity game tickets must be removed from this packaging container and thoroughly mixed prior to sale to the public."

(3) Manufacturers must include with every deal of pulltabs a bar code label that contains at a minimum the name of the manufacturer or its distinctive logo, the game form number and the game serial number. The bar code label must be visible from the outside of the package, box, or other container.

Section 5. Flares and Seal Cards. Every deal of pulltabs shall contain a flare or a seal card that has printed or affixed on it, by the manufacturer, the following information:

(1) The name of the game;
(2) The manufacturer's name or logo;
(3) The manufacturer's form number;
(4) The game serial number;
(5) The ticket count;
(6) The prize structure, including a description of the number of winning pulltabs by denomination, with their respective winning symbols or number combinations, and amounts dedicated to the prize pool in a seat card game with a cumulative, carryover, or progressive prize;
(7) The cost per play; and
(8) Instructions on how to play the game.

Section 6. Cumulative, Carryover, or Progressive Games. (1) The amount dedicated to the cumulative, carryover, or progressive jackpot must be predetermined by the manufacturer and built into the payout structure for the game. The dedicated amount must be printed by the manufacturer on either the flare or seal card for each game or on each ticket in each game.

(2) All games contributing to the cumulative, carryover, or progressive jackpot must be of the same form number.

(3) The flare or seal card for the cumulative, carryover, or progressive jackpot shall contain an area in which the current amount of the cumulative, carryover, or progressive jackpot can be posted.

(4) The flare or seal card for the cumulative, carryover, or progressive jackpot shall contain instructions on how the prize is to be awarded when the jackpot reaches the maximum prize limit.

(5) If a cumulative, carryover, or progressive game uses a jackpot prize card that is separate from the jackpot seal, the jackpot card must contain space for the organization to record the serial numbers of all games contributing to the jackpot.

Section 7. Event Games. (1) No event game may contain a "last sale" feature.

(2) The number of winners and the prize amounts must be built into the payout structure for the game by the manufacturer.

(3) No event ticket prize may exceed the individual ticket prize limit for a pulltab game.

(4) The prize for an event pulltab game shall not be considered a bingo prize.

Section 8. Multipackaged Pulltab Deals. Every package must be played for the deal to show the stated profit. Each package may contain individual winners if desired. If each package contains a winner, the game shall contain a method of verifying from which package the winner was sold.
Section 9. Tracking by Manufacturer. Every manufacturer of pulltabs shall maintain records sufficient to track each deal of pulltabs, by serial number and form number, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by office staff.

Section 10. Tracking by Distributor. (1) Every distributor of pulltabs shall maintain records sufficient to track each deal of pulltabs, by serial number and form number, from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by office staff.

(2) The records required under this section shall be deemed sufficient if the distributor:

(a) Records the name and Kentucky charitable gaming license of the purchaser at the next point of sale;

(b) Makes and retains a copy of a valid state identification card which contains the name, address, date of birth, and state identification number of the purchaser at the next point of sale.

Section 11. Requirements of Distributor Invoice. (1) Distributors selling pulltabs to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

(a) The purchaser's name, address, and license number;

(b) The address to which the shipment was delivered;

(c) The date of sale or credit;

(d) The conditions of the sale or credit;

(e) The quantity of pulltabs sold including the number of the deals, the name of each deal, the tickets per deal and the serial number and form number of the deal;

(f) The total invoice amount;

(g) The name of the person who ordered the supplies;

(h) The name of the person making the delivery;

(i) The date of delivery or date item was picked up for credit;

(j) The place or manner of delivery; and

(k) The name and signature of the person taking delivery, if any.

(2) A distributor may deliver pulltabs to an agreed place or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the office.

Section 12. Defects. (1) If a defect in packaging or construction of a pulltab is discovered by an organization the defect shall be reported to the distributor within fifteen (15) days. The distributor shall correct the defect within a reasonable time, if possible.

(2) A list of defects in packaging or construction of a pulltab reported to a distributor shall be reported to the office by each distributor on the quarterly report.

(3) If the office, in consultation with the manufacturer, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the office may, with respect to pulltabs for use in Kentucky, require the manufacturer to:

(a) Recall the pulltabs affected that have not been sold at retail to licensed organizations;

(b) Issue a total recall of all affected deals.

(4) In choosing and directing a particular recall from subsection (3) of this section, the office shall be guided in each circumstance by any combination of the following factors:

(a) The nature of the defect;

(b) Whether the defect affected game security;

(c) Whether the defect affected game playability;

(d) Whether the defect was limited to a specific number of deals of a particular form number;

(e) Whether the defect was easily detectable by a charitable gaming organization;

(f) Whether the defect was easily detectable by members of the general public;

(g) Whether the defect threatens public confidence in the game;

(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

(5) In consultation with the manufacturer, the office shall determine a specific date for the recall to be completed and whether the manufacturer is required to reimburse the organization or distributor.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LPC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 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 October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-6528, fax (502) 573-6525.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the requirements for the manufacturers and distributors regarding the construction of pulltabs.

(b) The necessity of this administrative regulation: This administrative regulation is needed so that the requirements for constructing pulltabs are more easily understood by the regulated community.

(c) How does this administrative regulation conform to the content of the authorizing statute: KRS 238.515(2) provides that the office shall establish and enforce reasonable standards for the conduct of charitable gaming and KRS 238.515(4) provides that the office shall establish standards of accounting, recordkeeping, and reporting to ensure charitable gaming receipts are properly accounted for.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for the construction and distribution of pulltabs.

(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: Originally 1 regulation dealt with the manufacturer, distribution, sell of pulltabs and the manufacture, distribution and operation of a pulltab dispensing machine. This regulation was separated into 3 parts. The construction standards were separated out, because manufacturers and distributors are more concerned about construction issues than organizations. This regulation generally restates the requirements of the former regulation except for new requirement concerning the manufacturing specifications, details of a sale and delivery of pulltabs.

(b) The necessity of the amendment to this administrative regulation: While construction of pulltabs is rarely an issue anymore, the distribution of them is. Statutes require all purchase to be reported to the office so we can monitor the funds produced through sale. A major problem is that charities obtain pulltabs that are not reported, and thus may not be accounted for in sales, pay-out or retention. Enhanced tracking capabilities in this regulation are needed to assure accountability.
VOLUME 32, NUMBER 4 – October 1, 2005

(c) How the amendment conforms to the content of the authorizing statutes: It conforms to the content of the authorizing statute, because it assists the manufacturers and distributors in complying with the statute.

(d) How the amendment will assist in the effective administration of the statute: The amendment will assist, because it makes the requirements easier to understand for the regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 30 manufacturers and 30 distributors.

(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: There should be very little impact, since the requirements have not been changed but only clarified.

(5) Provide an estimate of how much it will cost to implement this 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: Charitable gaming is funded by the regulated community.

(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 fee increase will be necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No.

(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all manufacturers and distributors.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)

820 KAR 1:034. Pulltab dispenser construction.

RELATES TO: KRS 238.545(1), (2)

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(1)(e) requires the office to establish standards for the use and control of pulltab dispensers. This administrative regulation establishes standards for the use and control of pulltab dispensers.

Section 1. Approval of an Automated Pulltab Dispenser. (1) An automated pulltab dispenser shall not be sold, leased, or otherwise furnished to any person in the state unless it has been approved by the office.

(2) Before approval by the office, a dispenser which is identical to the dispenser intended to be sold, leased, or otherwise furnished shall be certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements set forth in subsection (2) of this section.

(3) If granted, approval shall extend only to the specific dispenser model approved, and any modification shall first be approved by the office.

Section 2. Requirements for Automated Pulltab Dispensers. (1) Each pulltab dispenser shall:

(a) Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;

(b) Accommodate pulltabs of different sizes;

(c) Be constructed so that customers can see how many pulltabs remain within the dispenser, or have resettable counters visible to the customer indicating the number of pulltabs left in each column of the dispenser;

(d) Have an outlet or tray to catch dispensed pulltabs;

(e) Accurately dispense the correct number of pulltabs;

(f) Contain one (1) or more player buttons on the front of the dispenser to dispense pulltabs if pressed;

(g) Contain a laminated electronic display to display the value of money deposited;

(h) Be capable, if a malfunction occurs or the electrical power is interrupted after the money has been validated, of accurately redisplaying the value of the money after the malfunction or power is restored;

(i) Not dispense any credits, or validate, read, or redeem a winning pulltab;

(j) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;

(k) Not have a video screen or produce audio sounds except for security alarms;

(l) Not resemble a slot machine or other gambling device;

(m) Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;

(n) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;

(o) Not record test sales of pulltabs or money acceptances on the dispenser's accounting meters;

(p) Contain a nonresettable accounting meter for total money validated and for the total of pulltabs dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;

(q) Contain an EPROM microchip which holds the dispenser's programming code and which is identical in all respects to the manufacturer's EPROM microchip approved by the office;

(r) Contain a RAM, or an EPROM microchip equipped with a RAM microchip, which shall maintain the same information as required in paragraph (q) of this subsection for six (6) months after power has been disconnected. The microchip shall be installed with a tamper-proof seal inside the dispenser;

(s) Automatically discontinue operation if any nonresettable accounting meter, RAM microchip, or an EPROM microchip is disconnected; and

(t) Contain at least one (1) electronic money validator which shall:

1. Only validate United States money;

2. Not validate money in denominations in excess of twenty ($20) dollars;

3. Transmit the value of validated money to the pulltab dispenser;

4. Be equipped with mechanisms to ensure that pulltabs will not be dispensed unless the money is validated and retained;

5. Be capable of preventing acceptance of known counterfeit money;

6. Return any invalid money to the player;

7. Have at least one (1) removable stacker box capable of storing bills or a removable drop box contained in a separate locked compartment; and

8. Automatically discontinue accepting or validating money if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

Section 3. Automated Pulltab Dispensing Limitations. (1)(a) A charitable gaming organization shall not use the dispenser until a previous user has removed its pulltabs and money from the dispenser;

(b) Each charitable organization operating the dispenser shall place upon the dispenser an identification label which displays the organization's name and license number;

(c) The keys to open the locked doors to the dispenser's ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session;

(d) The entire deal of pulltabs must be sold from the dispenser and shall not be sold on the floor;

(e) All pulltabs in any one column shall have the same serial number;

(f) A licensee shall not display, use, or otherwise furnish a
Section 4. Inspection. (1) The office or its authorized representatives may examine and inspect any automated pulltab dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

Section 5. Recordkeeping. (1) Each licensed charitable organization shall maintain the following information in connection with its use of an automated pulltab dispenser: (a) Date of purchase or lease of each dispenser; (b) Model and serial number of each dispenser; (c) Purchase or lease price of each dispenser; (d) Name, address, and license number of the distributor from whom the dispenser was purchased, leased, or otherwise furnished; and (e) A record of all maintenance and repairs relating to the dispenser.

(2) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser: (a) Date of sale or lease; (b) Quantity sold or leased; (c) Cost per dispenser; (d) Model and serial number of each dispenser; and (e) Name, address, and license number of the purchaser or lessee.

(3) All records, reports, and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the office.

Section 6. Defects. (1) If the office detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, that affects the integrity or security of the pulltab game, the office may direct the manufacturer, distributor, or organization to cease the sale, lease, or use of the dispenser, as applicable, and may require the manufacturer to correct the defect, malfunction, or problem or recall the dispenser immediately upon notification by the office to the manufacturer. If the manufacturer, distributor, or organization detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, the entity shall immediately remove the dispenser from use and notify the office of that action.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)
RELATES TO: KRS 238.545(1), (2)
(2) NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9), 238.545(1),

(3) More than one (1) charitable organization cannot conduct gaming at the same time and location as another charitable organization, except for licensed charity fundraising events.

(4) Each organization’s gaming supplies must be maintained in a location separate from another organization’s gaming supplies. This location shall also be secured.

(5) No one shall volunteer for more than four (4) gaming occasions a week. Charity fundraising events are not included in this limitation.

(6) Anyone employed by the organization to perform janitorial, security, or bookkeeping duties shall not purchase or play pulltabs nor volunteer for any activities associated with that organization’s gaming.

(7) Except for a charity fundraising event, a volunteer at any other charitable gaming occasion at which pull tabs are sold shall not purchase or play pulltabs at that occasion. At a charity fundraising event, a volunteer may purchase or play pulltabs on a day the volunteer did not work, and from a deal the volunteer did not sell.

(8) If a charitable organization has "house rules" concerning its gaming occasion, the rules shall be posted in at least two (2) conspicuous locations at the gaming occasion, announced prior to the commencement of the gaming occasion, listed on the program, and kept with the gaming occasion records. The "house rules" shall not conflict with statutes or administrative regulations. The "house rules" shall be followed. The "house rules" shall include the organization’s name and license number.

Section 2. Playing. (1) The flare or seal card, including a seal card relating to a game with a cumulative, carry over, or progressive prize, shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play.

(2) Pulltabs shall not be sold to the public from the original package, box or container pulltab shall be removed from the original box or container and mixed together prior to sale.

(3) If a deal of pulltabs is received in two (2) or more boxes, packages or containers, all of the pulltabs from each box, package, or container shall be placed out for play at the same time. No container shall designate the winner.

(4) Pulltabs which have been marked, defaced, altered, tempered with, received in packaging that is tamper-resistant, or otherwise constructed in a manner which tends to deceive the public, or affect the chances of winning or losing shall not be placed into play. The organization shall notify the Office of Charitable Gaming of the existence of such tickets in writing within fifteen (15) days.

(5) Before placing a deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. If the charitable organization determines that serial numbers on tickets within a deal do not match the serial number on the flare or seal card accompanying the deal, the organization shall not place the deal into play and shall notify the distributor in writing within fifteen (15) days. For instructions on checking serial numbers in progressive pulltab games, see Section 6 of this administrative regulation.

(6) Any organizations which sell pulltabs from its office location or from a pulltab dispenser shall comply with all the rules regarding the play, and proper record-keeping and reporting of those sales. Such sales shall be reported on the quarter sheet report.

(7) (a) If a deal is not played to completion and there remain unsold winning pulltabs, the licensed charitable organization conducting the gaming shall sell the remaining pulltabs on the next appointed date for charitable gaming activities. To facilitate the prompt sale of pulltabs, the licensed charitable organization shall consider the deal closed or completed, declare the winners and post winning numbers for fifteen (15) days with information directing the method of claiming a prize. All unsold pulltabs shall be retained as required in subsection (14) of this section.

(b) If no winning pulltabs remain in the deal, the licensed charitable organization shall consider the deal closed or completed, declare the winners, and shall retain unsold pulltabs as required in subsection (14) of this section.

(c) No licensed charitable organization shall complete play of a deal or a seal card it did not initiate.

(d) A pulltab shall not be sold to the public at a price different than that printed by the manufacturer of the pulltab upon the flare or seal card which accompanies the deal.

(e) An authorized representative of the charitable organization conducting the event at which pulltabs are sold shall verify the serial numbers and winner protections for all winning pulltabs redeemed.

(10) If playing pulltabs that utilize a seal card, a charitable organization shall not award a prize to the holder of a winning pulltab unless the serial number on the ticket presented for redemption matches the serial number on the seal card. In a progressive game, the serial number on the tickets may not match the serial number on the Jackpot card if the deal is the second or subsequent deal played in the progressive game. However, the serial number of the ticket shall match the seal card accompanying the deal. For instructions on checking serial numbers in progressive games, see Section 6 of this administrative regulation.

(11) A charitable organization shall award prizes to winners of pulltabs only in accordance with the prize structure indicated on the flare or seal card accompanying the deal of tickets.

(12) A holder of a winning pulltab shall have fifteen (15) days to redeem the winning ticket. If the prize is not claimed within fifteen (15) days, the prize shall be considered unclaimed and be retained as property of the organization.

(13) Once redeemed, the holder of a winning pulltab shall be paid no later than five (5) days from the date of redemption.

(14) All winning pulltabs shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(15) All winning pulltabs with a prize value of fifty (50) dollars and above, the flare from all winning pulltabs with a prize value of fifty (50) dollars and above, seal cards, and 50-50 pulltab cards with a prize value of fifty (50) dollars and above, and all unsold pulltabs shall be retained by the charitable organization for a period of twelve (12) months to allow auditing by the staff of the office. The pulltabs, flares, and seal cards shall be disposed of by burning, shredding, destroying, or defacing in some manner to prevent reuse of any pulltab or seal card or any portion thereof.

(16) The fair market value of bingo paper, a card-minding device, or pulltab(s) given away as a merchandise prize is the price that a patron would have paid for the same bingo paper, card-minding device, or pulltab at that gaming occasion.

(17) If bingo paper is given away as a promotional item or a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher. The voucher shall be completed with the name, address, and phone number of the patron redeeming the voucher, the date on which it was awarded, the date on which it was redeemed, the amount of bingo paper given in exchange for the voucher, and the serial number of the bingo paper. Once the voucher is completed, it shall be redeemed for the bingo paper. The organization shall retain the voucher with its session records.

(18) If a card-minding device is given away as a promotional item or a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher. The voucher shall be
completed with the name, address, and phone number of the patron redeeming the voucher, the date on which it was awarded, the date on which it was redeemed, the number of card-minding devices and the number of faces loaded on each device given in exchange for the voucher. Once the voucher is completed, it shall be redeemed for the card-minding device. The organization shall retain the voucher with its session records.

(19) If a pulltab is given away as a promotional item, a door prize, or a bingo prize, the patron shall be given a voucher. The voucher shall be completed with the name, address, and phone number of the patron redeeming the voucher, the date on which it was awarded, the date on which it was redeemed, and the name, serial number, form number, and amount of the pulltab(s) given in exchange for the voucher. Once the voucher is completed, it shall be redeemed for the pulltabs. The organization shall retain the voucher with its session records.

(20) If pulltabs are given away as a pulltab prize, the name, serial number, form number, and amount of tickets awarded shall be recorded on the session sheet.

(21) The vouchers given by an organization shall be sequentially numbered.

Section 3. Jar Tickets. Jar tickets shall be played and prizes awarded as stated on the flare received with each deal.

Section 4. Seal Card Games. (1) The organization shall post the seal card for the deal in play at the location of the seal game.

(2) If a deal with a seal card is not completed during a gaming occasion, the organization shall require the patrons with holders to sign the seal card and provide a means of contacting them when the winner is declared.

(3) When all tickets from a deal have been sold, or when all the winning tickets from a deal have been sold, or when the deal has been closed because no future date is anticipated, the seal for the deal shall be broken or torn open, in plain view of all persons present. The winning combination(s), the specific form number, the number in the game, and the serial number of the deal shall be announced and posted at the location of the game. The date the seal tab was opened shall be recorded on the seal card. If the gaming location uses monitors, the seal card must be displayed in the monitor.

Section 5. "Last Sale" Pulltabs. "Last Sale" pulltabs shall only be sold by an organization at its office location and not during a bingo session.

Section 6. Seal Card Games with Cumulative, Carry Over, or Progressive Prizes. (1) Each progressive jackpot prize pool shall be established only through the play of deals of the same game which bear a manufacturer's form number identical to the form number of any previously-played deals contributing to the prize pool.

(2) Before placing a deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. The serial number on the tickets may not match the serial number on the progressive jackpot card if the deal is the second or subsequent deal played in the progressive game.

(3) After a progressive pulltab game has been started, it shall remain in play continuously until such time as the progressive prize is determined. If such game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If such game is begun at the office location, it shall be offered on each succeeding day.

(4) Prizes shall be offered and awarded only in accord with the manufacturer's predesignated prize structure for the game.

(5) The seal card for each deal in a progressive game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the progressive jackpot prize pool.

(6) Every seal card for each deal that has been played or is being played in the course of a progressive game, together with any seal card, shall be displayed or kept available for viewing at the location of the game at all times while the game is in play, until such time as the progressive prize is won.

(7) The serial numbers for each deal contributing to a cumulative, carryover, or progressive jackpot must be recorded in the gaming occasion records.

(8) If a prize reaches $2,400 without a winner, the prize must be awarded in accord with the manufacturer's specifications for the determination of a winner upon accumulation of the maximum amount.

(9) (a) If a progressive prize remains unclaimed, a licensed charitable organization shall display, in full and complete view of the players and at all times either:

1. The seal card being played; and each seal card contributing to the jackpot prize pool.

2. A legible poster identifying by name, serial number, and form number each deal of pulltabs contributing an amount to the jackpot prize pool.

(b) The poster or seal cards shall remain displayed during bingo sessions or other charitable gaming activities conducted by the organization until the expiration of fifteen (15) days after the organization awards the prize.

(c) If a progressive jackpot prize is not awarded, the organization shall continue to display the poster or seal cards during bingo sessions or other charitable gaming activities it conducts for at least fifteen (15) days after the date the organization considers the game closed and retains the prize as its property.

(10) An organization shall not award the jackpot prize in a progressive pulltab game unless the serial number on the winning ticket matches the serial number on a seal card from a deal of tickets which contributed to the jackpot prize.

(11) A licensed charitable organization shall report to the office concerning its play of seal card games with a progressive prize on the quarterly report.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AG Lee: September 6, 2005
FILED WITH AG: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, or 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 by you. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the rules of play for pulltabs.

(b) The necessity of this administrative regulation: This regulation is needed to establish the rules of play for pulltabs.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.5192(2) provides that the office will establish and enforce reasonable standards for the conduct of charitable gaming.

(d) How this administrative regulation currently assists or will...
assist in the effective administration of the statute; This administrative regulation sets forth the requirements for playing pulltabs.

(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 regulation establishes a new limit of 4 gaming occasions per week that any 1 volunteer shall be permitted to volunteer. This is a change from the current regulation and is needed to address the problem in which only a limited number of volunteers are involved with charitable gaming of an organization. More true volunteer involvement will prohibit the use of "professional volunteers" and provide more oversight for the integrity of the gaming operations. The regulation also requires that gaming supplies be secured.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for better enforcement of the statute.

(c) How the amendment conforms to the content of the authorizing statutes: It conforms to the content of the authorizing statute, because it explains how to correctly sell, play, and account for pulltabs.

(d) How the amendment will assist in the effective administration of the statute: The amendment will assist, because it makes the requirements easier to understand for the regulated community. It also assists in ensuring that true volunteers participate in charitable gaming.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 700 organizations.

(4) Provide an assessment of how the above group or groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be some impact, because the organizations will be required to run their games with real volunteers and not professional "volunteers." This will cause some hardship for some charities but is required to ensure that charitable gaming is conducted consistently with the statute.

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

(a) Initially: None

(b) On a continuing basis: None

(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.

(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 fee increase will be necessary to implement this regulation.

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

(9) TIERRING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all organizations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)


RELATES TO: KRS 238.515(2), (9)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9); 238.545(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the office to promulgate administrative regulations necessary to carry out the purposes and intent of KRS Chapter 238. KRS 238.515(2) authorizes the office to establish charitable gaming standards. This administrative regulation establishes standards for the construction and distribution of bingo paper.

Section 1. Conformity. (1) A licensed distributor of charitable gaming supplies and equipment shall only distribute, in Kentucky, bingo paper conforming to the requirement of this administrative regulation.

(2) A licensed charitable organization shall sell to the public only bingo paper conforming to the requirements of this administrative regulation.

(3) Reusable bingo hard cards shall be used only at charity fundraising events.

Section 2. Bingo Paper Construction Standards. (1) The paper used to construct paper bingo cards or faces shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through a pack thereby obscuring other numbers or cards.

(2) Perm numbers shall be displayed on the face.

(3) Numbers displayed on the face shall be randomly assigned.

(4) Each set of bingo paper shall be comprised of faces bearing the same serial number on the top sheet of the pack. A serial number shall not be repeated by the same manufacturer within one (1) year.

(5) Bingo paper assembled in packs shall be glued. Staples shall not be used.

(6) A label shall be placed on, or be visible from, the exterior of each bingo paper carton. The label shall list the following information:

(a) Type of product;
(b) Number of packs, cards, or loose sheets;
(c) Serial numbers;
(d) Serial number of the top sheet;
(e) Number of cases;
(f) Cut of paper; and
(g) Color of paper.

Section 3. Tracking by Manufacturer. Every manufacturer of bingo paper shall maintain records sufficient to track the bingo paper, by the serial number on the top sheet, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by office staff.

Section 4. Tracking by Distributor. (1) Every distributor of bingo paper shall maintain records sufficient to track the bingo paper, by the serial number on the top sheet, from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by office staff.

(2) The records required under this section shall be deemed sufficient if the distributor:

(a) Records the name and Kentucky charitable gaming license or exemption number of the purchaser at the next point of sale; or
(b) Makes and retains a copy of a valid state identification card which contains the name, address, date of birth, and state identification number of the purchaser at the next point of sale.

Section 5. Requirements of Distributor Invoice. (1) Distributors selling bingo paper to charitable organizations or other distributors shall provide the charitable organization with an invoice that contains, at a minimum, the following information:

(a) The purchaser’s name, address, and license number;
(b) The address to which the shipment was delivered;
(c) The date of sale or credit;
(d) The conditions of the sale or credit;
(e) The quantity of bingo paper sold including the number of sheets or packs in a set;
(f) The serial number of the bingo sets sold;
(g) The series number of the bingo sets sold;
(h) The cut of bingo paper sold;
(i) The color of bingo paper sold;
(j) The total invoice amount;
(k) The name of the person who ordered the supplies;
(l) The name of the person making the delivery;
(m) The date of delivery or date item was picked up for credit, and
(n) The place or manner of delivery including name and signature of the person taking delivery, if any.

(2) A distributor may deliver bingo paper to an agreed place or
to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge shall be made in writing to the distributor and a copy shall be sent to the office.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chrs Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets the requirements for manufacturers, distributors, and organizations regarding the construction and distribution of bingo paper.
(b) The necessity of this administrative regulation: This administrative regulation is needed so that the requirements for manufacturing and distributing bingo paper are known to the regulated community.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the office will establish and enforce reasonable standards of for the conduct of charitable gaming, and KRS 238.515(4) provides that the office will establish standards of accounting, recordkeeping, and reporting to ensure charitable gaming receipts are properly accounted for.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for the construction and distribution of bingo paper.
(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: Originally 1 regulation dealt with the manufacturer, distribution, sell of bingo paper and card-minding devices. This regulation was separated into 3 regulations. The construction standards were separated out because manufacturers and distributors are more concerned about construction issues than organizations.
(b) The necessity of the amendment to this administrative regulation: The regulation is more understandable by separating one lengthy regulation into 3 shorter and easier to understand regulations.
(c) How the amendment conforms to the content of the authorizing statutes: It conforms to the content of the authorizing statute because it assists the manufacturers and distributors in complying with the statute.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist because it makes the construction standards easier to understand.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 30 distributors and 30 manufacturers.
(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: There should be very little impact since the requirements have not been changed but only clarified.
(5) Provide an estimate of how much it will cost to implement this 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: Charitable gaming is funded by the regulated community.
(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 fee increase will be necessary to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directs the regulated community to pay any fees: No.
(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all manufacturers and distributors.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of charitable gaming
(New Administrative Regulation)

820 KAR 1:044. Bingo equipment.

RELATES TO: KRS 238.545
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), (238.551(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the office to promulgate administrative regulations necessary to carry out the purposes and intent of KRS Chapter 238. KRS 238.515(2) authorizes the office to establish charitable gaming standards. KRS 238.545(1)(b) requires the office to promulgate an administrative regulation concerning use and control of card-minding devices. This administrative regulation establishes standards for the construction and distribution of bingo equipment including standards relative to card-minding devices.

Section 1. Selection and Display Devices. (1) Bingo ball machines and other selection devices, flashboards and other display devices, and other bingo equipment used in the selection and display of game numbers shall be made available for inspection or testing by the office at any time.
(2) Equipment referenced in subsection (1) of this section shall be designed to produce randomness and be free of any defects when used in a bingo game.
(3) An organization shall not use a selection or display device with a defect. All bingo balls used in the machine or other device shall be of the same size, shape, weight, balance, and all other characteristics that control their selection, and must be clean and free of defects.

Section 2. Card-minding Devices. (1)(a) A card-minding device and associated site system shall not be sold, leased, or otherwise furnished to any person for use in the conduct of bingo until it has first been tested and approved by an independent testing facility, demonstrated to the office by the manufacturer if requested, and approved by the office.
(b) For a hand-held card-minding device, a device which is identical to the one (1) intended to be sold, leased, or otherwise furnished to any person for use in the conduct of bingo shall be tested and approved.
(c) For a fixed-base card-minding device, a device which contains identical software to the fixed-based card-minding device intended to be sold, leased, or otherwise furnished shall be tested and approved.
(2) The testing facility shall be approved by the office and the device and software shall be submitted at the manufacturer's expense. The testing facility shall ensure that the device and proprietary software conform to the restrictions and conditions set forth in this administrative regulation.

(3) Any modifications to a hand-held card-minding device or the software in a fixed base card-minding device shall be tested and approved by an independent testing facility, demonstrated to the office by the manufacturer if requested, and approved by the office.

(4)(a) The office, in consultation with the independent testing lab, shall determine whether all proprietary software and card-minding devices required to be tested by this administrative regulation, as well as other components of card-minding device systems, conform to the requirements and restrictions contained in this administrative regulation.

(b) Once the office has received the test results from the independent test lab, the office may request a demonstration of the product within thirty (30) days.

(c) The office shall either approve or disapprove the submission and inform the manufacturer of the results within thirty (30) days of the demonstration.

(d) The manufacturer may conduct routine maintenance activities and replace secondary components of a card-minding device system without prior office approval or additional testing as long as this activity does not affect the operation of any proprietary software or the manner in which a bingo game is played.

(5)(a) If the office detects or discovers any problem with a card-minding device system that affects the security or the integrity of the bingo game or the card-minding device system, the office shall direct the manufacturer, distributor, or charitable organization to cease the sale, lease, or use of the card-minding device system until the problem is corrected.

(b) The office shall require the manufacturer to correct the problem or recall the card-minding device system immediately upon notification by the office to the manufacturer.

(c) If the manufacturer, distributor, or charitable organization detects or discovers any defect, malfunction, or problem with the card-minding device system that affects the security or the integrity of the bingo game or card-minding device system, the manufacturer, distributor, or charitable organization shall immediately notify the office.

(6)(a) Distributors and charitable organizations shall not add or remove any software programs to an approved card-minding device system without the permission of the manufacturer.

(b) If the office detects or discovers a card-minding device system at a playing location that is using components or software that were required to have been approved by the office but have not been approved, the card-minding device system shall be determined to have an unauthorized modification and the use of the system shall cease immediately.

Section 3. Requirements for the Manufacturer of Card-minding Device Systems. (1) Manufacturers of card-minding device systems shall manufacture each system to include a point of sale station and an internal accounting system that is capable of recording the charitable organization's sale of all charitable gaming supplies.

(2)(a) Manufacturers of card-minding device systems shall manufacture each system to include a point of sale station and an internal accounting system that is capable of recording the charitable organization's sale of all charitable gaming supplies.

(b) The manufacturer shall provide to the office all current protocols, passwords, and any other required information needed to access the system prior to the operation of the system within Kentucky.

(c) The office shall be notified of any changes in the protocols, passwords, and any other required information needed to access the system at least ten (10) days prior to the change.

(d) Any reports maintained or generated by the card-minding device system shall be capable of being downloaded or otherwise accessed via the modem.

(3) Manufacturers of card-minding device systems shall manufacture each system to include a point of sale station and an internal accounting system that is capable of recording the charitable organization's sale of all charitable gaming supplies.

(4)(a) The information referenced in subsection (3) of this section shall be secure and shall not be accessible for alteration during the session.

(b) The system shall have report generation software with the capability to print all information required to be maintained on the site system's active or archived databases. The report shall be in a form prescribed by the office. The office shall make no changes to the form without giving the manufacturer sixty (60) days notice.

(c) Manufacturers of card-minding device systems shall manufacture each system to ensure that the applicable point of sale station is capable of printing a receipt for each sale or void a card-minding device. The receipt shall include the following information:

(d) The date and time of the transaction;

(e) The dollar value of the transaction and quantity of associated products;

(f) The sequential and consecutive transaction number;

(g) The session in which the product was sold;

(h) The serial number of each hand-held card-minding device sold; and

(i) The terminal number or account number associated with each fixed base card-minding device sold.

(5)(a) Card-minding device systems may include player tracking software. Player tracking records shall at all times be the property of the charitable organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the office or as otherwise authorized by law, the information contained within the player tracking software without the express permission of the charitable organization.

(6) Manufacturers of card-minding device systems shall manufacture each associated system to include a caller station verifier that is able to verify winning cards and to print the cards for posting. The caller station verifier shall be capable of posting all balls called for verification purposes and printing an ordered list of the called balls.

(7)(a) The card-minding device systems shall employ sufficient security safeguards to allow verification that all proprietary software components are authentic copies of the approved software components and all functioning components of the card-minding device system are operating with identical copies of approved software programs.

(b) The system shall have sufficient security safeguards to ensure that any restrictions or requirements authorized by the office or any approved proprietary software are protected from alteration by unauthorized personnel.

(c) Examples of security measures that may be employed to comply with these provisions include the use of dongles, digital signature comparison hardware and software, secure boot loaders, encryption, and key and callback password systems.

(8)(a) Manufacturers of card-minding device systems shall ensure that a card-minding device does not allow any bingo cards or faces other than those verifiably purchased by the patron to be available for play.

(b) A manufacturer shall not display, use, or otherwise furnish a card-minding device which has in any manner been marked, defaced, or tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.

(9)(a) If the card-minding device system is capable of using radio frequency, then it shall not be dual frequency.
The card-minding device system shall provide password protection for each organization.

The card-minding device system shall erase, deactivate, or render unplayable the electronic faces on each card-minding device prior to the next scheduled bingo occasion.

The card-minding device system shall require the patron to purchase additional electronic bingo faces at the site system and that additional faces cannot be purchased from the floor.

Section 4. Tracking by Manufacturer of Card-minding Device Systems. (1) Each manufacturer selling, leasing, or otherwise furnishing card-minding device systems shall maintain a single log or other record showing the following:
(a) The date of the transaction with the distributor;
(b) The model, version, and serial number of each hand-held card-minding device;
(c) The account number or terminal number of each fixed base card-minding device;
(d) The model and version number of all components of the site system software;
(e) The name and license number of the distributor to whom the card-minding device system was sold, leased, or otherwise furnished; and
(f) Contracts, leases, or purchase agreements between distributors of card-minding devices and the charitable organizations to which the devices are furnished.

(2) (a) Manufacturers selling, leasing, or otherwise providing card-minding device systems to distributors shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:
1. The date of sale and the time period covered by the invoice;
2. The quantity sold or leased; and
3. The total invoice amount.

(3) The manufacturer shall maintain physical or electronic copies of the above documentation for a period of thirty-six (36) months.

Section 5. Distributor Requirements for Card-minding Device Systems. (1) Before initial use by a charitable organization, the distributor shall ascertain that the particular device is approved by the office for use in Kentucky.

(2) If the card-minding devices are used at multiple locations, each location must have its own separate site system.

(3) Before the complete removal or hardware upgrade of any card-minding device system, the distributor shall supply a copy of the data files to each charitable organization which used the card-minding device system and to the office.

(4) A distributor shall not display, use, or otherwise furnish a card-minding device which has in any manner been marked, defaced, tampered with, or which is otherwise intended to deceive the public or affect a player's chances of winning.

(5) Each distributor selling, leasing, or otherwise furnishing card-minding device systems shall maintain a single log or other record showing the following information:
(a) The playing location name, physical address, telephone number, and facility license number, if applicable, where the card-minding device system is located;
(b) The model number and quantity of card-minding devices at each playing location;
(c) The date the card-minding device system was installed or removed;
(d) The model, version and serial numbers or terminal numbers of the card-minding devices and site system equipment;
(e) The name and license number of the charitable organization or distributor to whom the card-minding device system was sold, leased or otherwise furnished,
(f) The name and license number of the manufacturer or distributor from whom the card-minding device system was purchased, leased or otherwise obtained;
(g) Contracts, leases or purchase agreements between distributors of card-minding devices and the charitable organizations to which the devices are furnished, and
(h) The total dollar amount of card-minding device sales or lease transactions regarding each charitable organization to which card-minding devices were furnished during each calendar quarter.

(6) (a) Distributors selling, leasing, or otherwise providing card-minding device systems to charitable organizations or distributors shall provide the charitable organization or distributor with an invoice or other documentation that contains, at a minimum, the following information:
1. The date of sale and the time period covered by the invoice;
2. The quantity sold or leased, and
3. The total invoice amount.

(7) The distributor shall maintain physical or electronic copies of the above documentation for a period of thirty-six (36) months.

Section 6. Requirements for Charitable Organizations Using Card-minding Device Systems. (1) Before initial use of a card-minding device system by a charitable organization, the organization shall ascertain that the particular device is approved by the office for use in Kentucky.

(2) A licensed charitable organization shall not display, use, or otherwise furnish a card-minding device which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a player's chances of winning.

(3) If a player's card-minding device becomes inoperable during a bingo game, it shall not be replaced while the game is in progress. It may be repaired if the repair will not interrupt the game.

(4) Each card-minding device shall be limited to offering for play a maximum of seventy-two (72) card faces during any one (1) game of a session.

(5) The charitable organization shall ensure that the card-minding device system does not allow a card-minding device to be used to obtain a bingo prize for any bingo game other than for a game within the bingo session for which the card-minding device was sold.

(6) The office may examine and inspect any card-minding device and site system. The office shall be granted immediate access to the card-minding devices and unlimited inspection of all parts of the site system.

(7) The organization shall provide the player with a receipt printed on a receipt printer for each sale detailing the transaction. The receipt shall contain, at a minimum, the following information:
(a) A unique nonresettable transaction number that is printed in continuous, consecutive order;
(b) The serial number of the card-minding device issued;
(c) The date and time the receipt was issued;
(d) The name of the licensee and license number; and
(e) A description, quantity, purchase price and total dollar amount of item(s) purchased.

(8) The organization shall void the original transaction and issue a new receipt if a player requests a partial or full refund. Additional purchases do not require voiding of the original transaction.

(9) Voided transactions shall be treated in the following manner:
(a) Voided transactions shall be processed immediately;
(b) If a voided transaction involves a card-minding device, the card-minding device shall be connected to the site system to ensure all electronic bingo cards are erased or deactivated;
(c) The player must possess the receipt issued at the time of the purchase of the card-minding device before the purchase may be voided.

(10) The word "void" shall be clearly printed on the receipt.
(e) The player shall write his or her name, address, telephone number, signature, and amount of refund on the back of the receipt before a partial or full refund may be issued.
(f) All voided receipts must be attached to the Total Sales Activity Report printed at the end of each bingo occasion and maintained with the gaming records.

(11) If the organization loads the card-minding devices prior to selling them, all unsold card-minding devices shall be voided by the start of the second game. The organization shall not preload more than 100 devices before the start of a gaming session.

(12) If a card-minding device malfunctions, the organization shall load the same faces on another card-minding device.

(13) If the receipt printer malfunctions or printed receipts are
not legible, manual receipts shall be issued in accordance with subsection (7) of this section.

(12) If the office or any player requests verification of a winning card face played on a card-minding device, the session chairperson shall print the winning card face and post it in a conspicuous location where it may be viewed in detail. Winning card faces requested for posting shall remain posted for at least thirty (30) minutes after the completion of the last bingo game at that particular session.

(13) The organization shall ensure that the dial up phone lines remain attached to the site system at all times and are operational.

(14) Any organization using a card minding device system shall record all sales, including bingo paper (door and floor sales), disposable bingo cards, card-minding devices, and pulltabs on a point of sale station.

(15) If the organization sells card-minding devices for a discounted price, or gives them away as a promotion, the site system shall be programmed to account for the discounted item and price separately from those sold at the regular price. A generic discount key is not allowed.

(16) The organization shall print a total sales activity report from the point of sale at the end of each bingo session and maintain with the cash registers.

(17) A manufacturer's representative or distributor representative may be present only to preload or void card-minding devices or to reload the same cards to another card-minding device in the event of a malfunction of a device. The manufacturer or distributor representative shall have a separate password from the password of the organization. Any such manufacturer or distributor representative shall perform such services at a separate docking area away from the area in which sales are made.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by Tuesday, October 18, 2005, 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 this public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5526, fax (502) 573-5525.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets the requirements for manufacturers, distributors, and organizations regarding bingo equipment.

(b) The necessity of this administrative regulation: This administrative regulation is needed so that the requirements for manufacturing, distributing, and operating bingo equipment and in particular, card-minding devices are known to the regulated community.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the office will establish and enforce reasonable standards of for the conduct of charitable gaming and KRS 238.515(4) provides that the office will establish standards of accounting, recordkeeping, and reporting to ensure charitable gaming receipts are properly accounted for.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for the construction, distribution, and operation of bingo equipment and more particularly, card-minding devices.

(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 the second of 3 regulations separated for ease of use. This regulation requires all sales to be recorded electronically at a point of sale station if the organization uses a card-minding devices system. The point of sale functions as a "cash register" in which all sales are electronically recorded. The office has electronic access to these records for verification of sales. There is a great need in Kentucky for this level of financial accountability regarding sales transactions in an all cash operation. In addition, the regulation places limits on the preloading and voiding of card-minding devices which will greatly increase the integrity of the conduct of the game.

(b) The necessity of the amendment to this administrative regulation: The amendment makes the regulation easier to understand and follow and increases the accountability and therefore the integrity of the game.

(c) How the amendment conforms to the content of the authorizing statutes: It conforms to the content of the authorizing statute, because it assists in the conduct of charitable gaming and the accounting and recordkeeping to insure that charitable gaming receipts are properly accounted for.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist, because it requires the organizations to keep better records of product sold and money received.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 700 organizations, 30 distributors, and 30 manufacturers.

(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: The organizations will be impacted because it will force them to use a cash register which will mechanically record all sales. The office will have access to these records.

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

(a) Initially: None

(b) On a continuing basis: None

(c) The source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.

(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 fee increase will be necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all organizations, distributors, and manufacturers.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)

820 KAR 1:046. Bingo rules of play.

RELATES TO: KRS 238.545
STATUTORY AUTHORITY: KRS 238 515(2), (9), 238.545(1)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(6) authorizes the office to promulgate administrative regulations necessary to carry out the purposes and intent of KRS Chapter 238. KRS 238.515(2) authorizes the office to establish charitable gaming standards. KRS 238.545(1)(b) requires the office to promulgate an administrative regulation concerning use and control of card-minding devices. This administrative regulation establishes standards for the conduct of play of bingo.

Section 1. General Provisions. (1) All individuals involved in any way the conduct of bingo shall be trained in the proper conduct of the game and the control of funds.

(2) The chairperson shall be in charge of the licensed gaming occasion, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds. The chairperson shall not be compensated.

(3) Except for Braille cards intended for use by blind players, bingo paper or card minding devices shall not be reserved by the charitable organization for any player. Legally-blind players may use their own cards if the licensees do not make Braille cards available. Braille cards are not considered gaming supplies.

(4) More than one (1) charitable organization cannot conduct gaming at the same time and location as another charitable organization except for licensed charity fundraising events.

(5) If a bingo session must be cancelled once it is commenced, an organization may refund a portion of the purchase price of the bingo paper or card-minding device. An organization cannot continue the session or award the prizes at a later date.

(6) Each organization’s gaming supplies must be maintained in a location separate from another organization’s gaming supplies.

(7) A volunteer at a charitable gaming occasion at which bingo cards or faces are sold shall not purchase or play bingo cards or face at that occasion.

(8) No one shall volunteer for more than four (4) gaming sessions in a week. Charity fundraising events are not included in this limit.

(9) Any volunteers employed by the organization to perform janitorial, security, or bookkeeping duties shall not purchase or play bingo faces nor volunteer for any activities associated with that organization’s gaming.

(10) If the charitable organization has "house rules" concerning its bingo session, these rules shall be posted in at least two (2) conspicuous locations at the bingo session, announced prior to the commencement of the bingo session, listed on the bingo program, and kept with the organization’s session record. The "house rules" shall not conflict the statute or the administrative regulations. The "house rules" shall be followed. The "house rules" must include the organization’s name and license number.

(11) Every ball in the bingo machine or other selection device shall be placed out for verification at the commencement and at the completion of each bingo session.

(12) Each sheet in a pack shall be distinguishable from all other sheets in the pack by color or border.

(13) Individual bingo paper sheets in a pack shall not be sold as individual bingo paper sheets.

(14) The organization shall buy a complete set of paper and use that paper before starting another set.

(15) An organization shall not use two (2) or more sets of bingo paper sheets or bingo paper sheets packs during a single bingo game if they have identical faces, except that identical faces may occur on open break bingo paper sheet faces during a break open bingo game.

(16) A player or charitable organization shall not separate faces on one (1) sheet or any sheets in a pack prior to play.

(17) The price for each type of bingo sheet, pack, or package must be listed on the bingo program.

(18) Bingo paper sheets, bingo paper packs, and bingo paper packages shall be used during the bingo session for which they were purchased. An organization shall not allow a player to carry over purchased, but unused, bingo paper sheets, bingo paper sheet packs, or bingo paper packages to a subsequent bingo session.

(19) No organization shall allow a player to play bingo paper that was not purchased at that session except for Braille cards as set forth in 820 KAR 1:043(3).

(20) If a bingo pack or package is sold after the first game in a session, the organization shall deface the sheets for games already played or in play. No bingo paper sheets or break opens may be sold after the game has been played or is in play.

(21) The organization shall not duplicate or otherwise make copies of bingo paper.

(22) Each bingo sheet, pack, or package shall be sold separately. An organization shall not sell multiple sheets, packs, or packages for less than the total value of each if they were sold separately.

Section 2. Playing. (1) All players shall be physically present at the location where the bingo game is held in order to play the game or claim a prize offered.

(2) The bingo session starts when the selection device is activated.

(3) Before selecting or calling the first number in a game, the bingo caller shall call out the amount of the game prize to be awarded.

(4) Before selecting and calling the first number in a game, the bingo caller shall announce the pattern or arrangement of squares to be covered to win the game. This information shall also be posted in a conspicuous place and listed in an occasion program.

(5) After selecting each number, the bingo caller shall:

(a) Clearly announce the number;

(b) Display the ball or other device used in a manner allowing the players to see the number;

(c) Cause the ball or other device to be placed in a ball tray or other device so as to prevent it from being placed back into the selection pool, and

(d) Enter each letter and number called on a flash board or similar device for player viewing.

(6) A winner shall be determined when the preannounced pattern of squares is covered by a player on a card.

(7) It shall be the player’s responsibility to notify the game operator or caller that the player has a winning bingo combination as announced.

Section 3. Pickle Jar, Bonanza Ball, or Hot Ball. If the organization gives an additional prize if a patron wins on a certain number, the rules of play and cost to enter must be listed on the occasion program. These numbers may be selected and posted before the first game is called.

Section 4. Break Open Bingo. (1) A break-open bingo game begins when, in the presence of players attending the bingo occasion, the organization calls and posts, either manually or by use of a flashboard, a predetermined quantity of randomly selected bingo numbers from a selection device or a separate bingo number container. These numbers must be posted on a separate board than the regular bingo board unless the regular board is capable of keeping track of these numbers separately. The balls are then placed back into the selection pool until the game is played on the program.

(2) Sealed bingo paper sheets for a break open game may be sold throughout the bingo occasion. However no additional sealed bingo paper sheets may be sold after the organization resumes calling letters and numbers when the game is played on the program.

(3) An organization may allow players to trade break open bingo faces for new faces.

(4) If the break open bingo game(s) are traded, two (2) sets of the game must be maintained. One (1) set shall be known as the "original set" and shall be of a different color than the second set, known as the "trade-in" set.

(5) An organization shall announce at the start of the break open bingo game, and shall list on the program, the color and price of the original set and the trade-in set.

Section 5. Player Pick. (1) A player shall select numbers between one (1) and seventy-five (75). A player shall select more than five (5) numbers for each column.
(2) No duplicate numbers shall be played on a purchased face. If duplicate numbers appear on a face, the card shall be void.
(3) Once selected, the machine will print a face with the selected numbers.
(4) The faces shall conform to the construction and randomization standards in the regulations.
(5) The price of each face and the amount of numbers that must be chosen shall be listed on the occasion program.
(6) The numbers are daubed as the balls are called when the game is played as listed on the occasion program.
(7) A player wins if he or she is the first person to cover the numbers.

Section 6. Continuation Games. (1) Up to three (3) patterns may be played on one (1) bingo face. Each portion of the continuation game shall be considered a single bingo game, even though the bingo balls are not returned to the selection pool after a winner has been determined and verified.
(2) Each winning pattern shall be verified independently.

Section 7. Progressive Bingo Games. (1) (a) Progressive games wherein prizes are contingent upon a bingo game or conditioned on winning a bingo game shall be permitted if prizes awarded on progressive games are included in the prize limit of $5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1) regardless of the method by which a player is eligible to participate.
(b) The licensed charitable organization shall be responsible for ensuring that the value of any progressive bingo game prize, when added to the values of the other prizes of the same date or occasion, does not exceed the $5,000 limit.
(c) All receipts on progressive bingo games shall be reported to the office as gross receipts for the date collected pursuant to KRS 238.550.
(2) Once a progressive bingo game has been started, the game shall be played in the same manner at every occasion until the prize is awarded. The jackpot prize shall be offered at each successive bingo occasion for the licensee until the jackpot prize has been won.

Section 8. Winner Verification and Registration. (1) Manufacturers of bingo paper shall make available for purchase a verification book or other verification system for all paper manufactured.
(2) The charitable organization conducting a bingo game shall use a reliable verification system that corresponds with the set of paper in play.
(3) When a player declares a winning bingo, the following steps shall be followed for winner verification:
(a) The game shall be stopped before the next number is called. If the number listed has been selected, it shall be secured to ensure that if the declared “bingo” is invalid, the game may continue.
(b) If an electronic verifier or verifier book is used, a volunteer for the charitable organization shall show the winning face to a neutral player, and call back the perm number while in front of the neutral player. If any other verification system is used, a volunteer for the charitable organization shall show the winning face to a neutral player, and call back the winning combination while in front of the neutral player.
(4) The caller shall ask at least twice if there are any other winners before announcing the close of the game. If playing a continuation game, the caller shall ask at least twice if there are any other winners before the close of that part of the game.
(5) If more than one (1) winner is declared in a bingo game, the following method of awarding prizes shall apply:
(a) Cash prizes shall be divided equally among the verified winners; and
(b) If the prize is something other than cash and cannot be divided among winners, prizes of equal proportionate value shall be awarded.

Section 9. Prizes. (1) If a merchandise prize or discount is available to everyone, it shall be considered a promotional item and counted as an expense.
(2) If a merchandise prize or discount is not available to everyone, it shall be included in the prize limit of $5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1) at its fair market value. It shall be included in expenses for purchased prizes at actual cost.
(3) The fair market value of bingo paper or pulltabs given away as a merchandise prize is the price a patron would have paid for the same bingo paper or pulltab at that gaming occasion.
(4) If bingo paper is given away as a promotional item, a door prize, or a bingo game prize, the patron shall be given a voucher. The voucher shall be completed with the name, address, and phone number of the patron redeeming the voucher, the date on which it was awarded, the date on which it was redeemed, the amount of paper given in exchange for the voucher, and the serial number of the bingo paper. Once the voucher is completed, it shall be redeemed for the bingo pack(s). The organization shall retain the voucher with its session records.
(5) If a pulltab is given away as a promotional item, a door prize, or a bingo prize, the patron shall be given a voucher. The voucher shall be completed with the name, address, and phone number of the patron redeeming the voucher, the date on which it was awarded, the date on which it was redeemed, and the serial number, form number, and amount of the pulltab given in exchange for the voucher. Once the voucher is completed, it shall be redeemed for the pulltabs. The organization shall retain the voucher with its session records.
(7) The vouchers given by an organization shall be sequentially numbered.
(8) Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 BRighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes the rules of play for bingo.
(b) The necessity of this administrative regulation: This regulation is needed to establish the rules of play for bingo.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides the office will establish and enforce reasonable standards for the conduct of charitable gaming.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for playing bingo.
(2) If this is an amendment to an existing administrative regu-
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(2) A processing fee of twenty-five (25) dollars shall accompany each application for licensure.

(3) At the time the application is filed, the organization shall provide the office with a copy of the executed lease, if applicable.

(4) All information requested by the office shall be submitted and reviewed before a license can be granted.

(5) The office may issue a license if the applicant possesses a regular charitable gaming license and has met the requirements for licensure set forth in KRS 238.545(2) and 238.545(4).

(6) The license shall be issued for the county in which the organization currently holds its regular gaming license.

(7) The event shall not be advertised nor preregistrations taken until a license is issued.

(8) Once a license is issued, players may preregister for the event only if payment is received by credit card and credited into the charitable gaming account.

Section 2. Special Limited Games Played at a Charity Fundraising Event. (1) The office may grant approval to play special limited games at a charity fundraising event if the information contained in the application and the totality of the circumstances show that the event meets the requirements of KRS 238.545(4)(d).

(2) Special limited games played at charity fundraising events pursuant to KRS 238.545 (4)(d) shall not exceed six (6) hours and shall be conducted only between the hours of noon and 1:00 a.m.

(3) A central bank shall be maintained and script shall be used for all special limited games played. The central bank shall be used for selling and redeeming script.

(4) For all games that require a central bank to be used, the amount of cash received for selling script is the gross receipts, all gross receipts are the payoffs, and all cash remaining is the adjusted gross receipts.

(5) Games requiring a predetermined amount of script shall be precounted. Accurate records shall be kept of all script sales, whether the sale is an initial entry fee or a later purchase of script.

(6) If special limited games are played at a charity fundraising event, the rules of each type of special limited game played and the cost to enter shall be listed on the gaming occasion program.

(7) If the special limited games are played as a tournament, then:

(a) A record of attendance shall be kept for the special limited game.

(b) Each player's name and address shall be recorded upon payment of the entry fee. If additional script is purchased, the amount purchased shall be included in the patron's total. If the script is redeemed, the amount shall be indicated by the patron's name.

Section 3. Volunteers. (1) All individuals involved in any way in the conduct of a charity fund raising event shall be trained in the proper conduct of the game and the control of funds. No individual can receive compensation for being a volunteer at such an event.

(2) The chaperon shall be in charge of the licensed gaming occasion, shall supervise and direct all volunteers, and shall be responsible for the proper receipt and recording of gaming funds. The chaperon shall not be compensated.

(3) An individual cannot volunteer for more than four (4) charity fund raising events per year. This limitation does not include the four (4) gaming occasions per week as set forth in 820 KAR 1:036, Section 1(5), and 820 KAR 1.046, Section 1(6).

Section 4. Equipment Used for Events. (1) Poker tables, blackjack tables, prize wheels, and chips, script, or imitation money are not charitable gaming supplies, and equipment and may be purchased from ordinary sources of supply. The organization shall not pay for poker tables, blackjack tables, prize wheels or chips, script, or imitation money from the charitable gaming account.

(2) Roulette wheels and craps tables are charitable gaming supplies and shall be obtained from a licensed distributor. The organization shall pay for roulette wheels and craps tables from the charitable gaming account.

(3) If special limited games are played, the organization shall provide the office with a copy of the executed contract for the use

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
New Administrative Regulation

820 KAR 1:055. Charity fundraising event standards.

RELATES TO: KRS 238.515(2), (4), (9), KRS 238.545

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.535(5)(d), 238.545(4)

NECESSITY, FUNCTION, AND CONFORMITY: The Office of Charitable Gaming is authorized by KRS 238.515(2) to establish reasonable standards for the conduct of charitable gaming. This administrative regulation establishes standards for the conduct of charity fund raising events.

Section 1. Issuance of License. (1) An organization shall submit a complete, accurate, and verifiable application for a charitable fundraising event at least thirty (30) days prior to the scheduled date for the charity fundraising event.
of supplies of those supplies no later than thirty (30) days following the event. This contract shall specify exactly the items provided, at what cost, and from whom.

Section 5. Expenses. (1) The organization shall pay the gaming expenses for the event from the gaming account. All other expenses shall be paid from the general account.
(2) If an expense is both a gaming expense and a general expense, the expense shall be prorated pursuant to the amount of gross receipts obtained from gaming and nongaming events. The full amount shall be paid from the general account and the amount attributable to gaming shall be reimbursed from the gaming account to the general account.

Section 6. House Rules. (1) If the charitable organization has "house rules" concerning the event, it shall post those rules at each location of gaming at the event including each booth, and keep them with the gaming occasion record. The "house rules" shall not conflict with the statute or the regulations. The "house rules" shall include the organization's name and license number. The "house rules" shall be followed.

Section 7. Incorporation by Reference. (1) Form CG-ScheduleA, "Application for Charity Fundraising Event License or Special Limited Charity Fundraising Event License (05/05)" is incorporated by reference.
(2) These forms may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, between 9 a.m. and 4:30 p.m., Monday through Friday.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LICENSING: September 12, 2005
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend this 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 shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation gives guidance to organizations in the application for obtaining a charity fundraising event license and in the play of the games.
(b) The necessity of this administrative regulation: This regulation is needed to clarify the rules for conducting a charity fundraising event.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the office will establish and enforce reasonable standards for the conduct of charitable gaming.
(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, because it is the first time that the rules for conducting a charity fundraising event have been codified in a regulation.
(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 regulation will affect approximately 700 organizations.
(4) Provide an assessment of how the above groups or organizations will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. There should be very little impact from this regulation. The regulation basically codifies the existing practice.
(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.
(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 fee increase will be necessary to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all organizations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)
820 KAR 1:056 Special limited charity fundraising event standards.

RELATES TO: KRS 238.515(2), (4), (9), 238.545(4), 238.547
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.535(3)(d), 238.545(4), 238.547
NECESSITY, FUNCTION, AND CONFORMITY: The Office of Charitable Gaming is authorized by KRS 238.515(2) to establish reasonable standards for the conduct of charitable gaming. This administrative regulation establishes standards for the conduct of special limited fund raising events.

Section 1. Issuance of License. (1) An organization shall submit a complete, accurate, and verifiable application for a special limited charitable fundraising event at least thirty (30) days prior to the scheduled date for the special limited charity fundraising event.
(2) A processing fee of twenty-five (25) dollars shall accompany each application for licensure.
(3) At the time the application is filed, the organization shall provide the office with a copy of the executed lease, if applicable.
(4) All information requested by the office shall be submitted and reviewed before a license shall be granted.
(5) The office may issue a license, if the applicant possesses a regular charitable gaming license and has met the requirements for licensure set forth in KRS 238.505(18) and 238.547.
(6) The license shall be issued for the county in which the organization currently holds its regular gaming license.
(7) The event shall not be advertised nor preregistrations taken until a license is issued.
Section 2. Volunteers. (1) All volunteers involved in any way in the conduct of a special limited fund raising event shall be trained in the proper conduct of the game and the control of funds. No volunteer can receive compensation for volunteering at such an event.

(2) The chairperson shall be in charge of the licensed gaming occasion, shall supervise and direct all volunteers, and shall be responsible for assuring the proper receipt and recording of gaming funds. The chairperson shall not be compensated.

(3) An individual cannot volunteer for more than four (4) charity fund raising events per year, including two (2) special limited fund raising events. This limitation does not include the four (4) gaming occasions per week as set forth in 820 KAR 1:036, Section 1(5), and 820 KAR 1:046, Section 1(6).

Section 3. Equipment Used for Events. (1) Poker tables, blackjack tables, prize wheels, and chips, script, or imitation money are not charitable gaming supplies and equipment, and may be purchased from ordinary sources of supply. The organization shall not pay for poker tables, blackjack tables, prize wheels or chips, script, or imitation money from the charitable gaming account.

(2) Roulette wheels and craps tables are charitable gaming supplies and must be obtained from a licensed distributor. The organization shall pay for roulette wheels and craps tables from the charitable gaming account.

(3) For the special limited games played at the event, the organization shall provide the office with a copy of the executed contract for the use of those supplies no later than thirty (30) days following the event. This contract shall specify exactly the items provided, at what cost, and from whom.

Section 4. Expenses. (1) The organization shall pay the gaming expenses for the event from the gaming account. All other expenses shall be paid from the general account.

(2) If an expense is both a gaming expense and a general expense, the expense shall be prorated pursuant to the amount of gross receipts obtained from gaming and nongaming events. The full amount shall be paid from the general account and the amount attributable to gaming shall be reimbursed from the gaming account to the general account.

(3) Food, beverages, and other items provided to participants without additional payment shall be considered a promotional expense, if all participants are equally eligible.

Section 5. House Rules. If a charitable organization has "house rules" concerning the event, it shall post those rules at the gaming occasion, announce them prior to the commencement of the event, and (3) Food, beverages, and other items provided to participants without additional payment shall be considered a promotional expense, if all participants are equally eligible.

Section 6. Gaming Occasion Program. The rules of each type of special limited games played and the cost to enter must be listed on the gaming occasion program. The program shall be available to all players.

Section 7. Incorporation by Reference. (1) Form CO-Schedule A, "Application for Charity Fundraising Event License or Special Limited Charity Fundraising Event License (0505)" is incorporated by reference.

(2) These forms may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-2639, 8 a.m. to 4:30 p.m., Monday through Friday.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005 at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation gives guidance to organizations in the application for obtaining a special limited charity fundraising event license and in the play of the games.

(b) The necessity of this administrative regulation: This regulation is needed to clarify the rules for conducting a special limited charity fundraising event and more particularly Texas Hold `em poker tournaments.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the office will establish and enforce reasonable standards for the conduct of charitable gaming.

(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, because it is the first time that the rules for conducting a special limited charity fundraising event have been codified in a regulation.

(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
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(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 700 organizations.

(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: There should be very little impact from this regulation. The regulation basically codifies the existing practice.

(5) Provide an estimate of how much it will cost to implement this 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: Charitable gaming is funded by the regulated community.

(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 fee increase will be necessary to implement this regulation.

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

(9) "TIERING" is tiering applied? Tiering is not applied, because this regulation applies equally to all organizations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)

820 KAR 1:057. Accurate records.

RELATES TO: KRS 238.550(5)
STATUTORY AUTHORITY: KRS 238.500, 238.515(4), (9), 238.550(2), (3), (4), (5), 238.560(2)
NECESSITY OF ACTION AND CONFORMITY: KRS 238.515(4) and 238.560(5) authorize the office to establish and enforce standards for accounting, record keeping, and reporting to the office to ensure charitable gaming receipts are counted and reported. This administrative regulation establishes the minimum requirements for accurate records.

Section 1. Bank Account and Records. (1) A licensed charitable gaming organization shall maintain a single bank account for charitable gaming receipts. This account shall be separate from any other account maintained by the organization.

(2) Disbursements for charitable gaming expenses and charitable donations shall be made by check or electronic fund transfer directly from the charitable gaming account.

(3) All receipts from each gaming occasion shall be deposited by the second business day following the occasion at which they were received. The deposit(s) for each occasion shall be made separately and cannot be combined with the deposit(s) from any other occasion.

(4) All types of deposits, including but not limited to, startup cash, bad checks and check collection fees, progressive game carry forward, and adjusted gross receipts, shall be made into the charitable gaming account in separate deposits with each type on a separate deposit ticket. Each item of each deposit, including each individual check, must be listed separately on the deposit ticket. If a register tape is run listing the amounts of the individual checks it can be attached to the deposit slip. Total cash and coins must be listed separately.

(5) Bad checks that have not been collected shall be retained by the organization for three (3) years after the year the check was issued. If the check has been turned over to someone else for collection, the organization shall keep a copy of the check with information regarding the person collecting the check.

(6) Monthly bank statements and reconciliations for all accounts shall be maintained for three (3) years following the close of a calendar year.

(7) Copies of the fronts and backs of checks from any account into which charitable gaming funds are deposited or transferred shall be maintained for three (3) years following the close of a calendar year.

Section 2. Start Up Cash. (1) If the source of start-up cash is not the charitable gaming account, the source of the start-up cash must be identified on the gaming occasion sheet and signed by an officer and the chairperson.

(2) If there is any change in the amount of start-up cash for each session, a detailed explanation shall be provided on the gaming occasion records and shall be signed by an officer and the chairperson.

(3) Start up cash from one organization shall not be commingled with the start up cash from another organization. The start up cash shall be identified as such on the check withdrawing the funds and on the deposit slip.

Section 3. Organization Records. (1) The chief financial officer shall be the custodian of the gaming records and shall be responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the office.

(2) An organization that hand-writes data and later enters the information onto another form or computer program shall retain the hand-written records along with the other form or computer generated record.

(3) If an organization is deficient in complying with statutory or regulatory requirements or has ineffective internal controls, the office may impose restrictions or additional record keeping and financial reporting requirements on that organization.

(4) Organizations shall prepare and maintain accurate and adequate corporate or other organizational records including articles of incorporation, minutes of board of directors meetings, and resolutions.

(5) Organizations shall maintain detailed records of all expenditures made in furtherance of its charitable purpose, including all charitable contributions.

(6) All records shall be made available for inspection and audit at the request of the office.

(7) Any organization’s records, or copies of those records, deemed necessary to complete an inspection, audit, or investigation may be retained by the office or its employees or agents. The office shall provide a written receipt of such records at the time of removal.

(8) Organizations shall provide records requested by the office, or any of its employees, within ten (10) calendar days, unless a longer response time is allowed by the request. Failure to provide any record within the allowable time period shall be a violation of this regulation subject to fines and all appropriate administrative action, including denial of license renewal or revocation or suspension of the gaming license.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 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. Anyone who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of Intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brigh-
VOLUME 32, NUMBER 4 – October 1, 2005

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chis Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: The statute requires the organizations to keep accurate records, but there is no explanation for what are considered accurate records. This regulation gives guidance to organizations regarding what are considered accurate records.
(b) The necessity of this administrative regulation: This regulation is needed to clarify the accurate record requirement in the statute.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the office will establish and enforce reasonable standards for the conduct of charitable gaming and KRS 238.515(4) requires the office to establish standards of accounting, recordkeeping, and reporting.
(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, because it is the first time that the expectations regarding accurate records have been codified.
(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 regulation will affect approximately 700 organizations.
(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: There will be some impact, because some organizations do not keep records. It will require the organizations to manage their game in a more professional fashion.
(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initial: None
(b) On a continuing basis: None
(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Charitable gaming is funded by the regulated community.
(6) 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 fee increase will be necessary to implement this regulation.
(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(8) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all organizations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)

820 KAR 1:058 Gaming occasion records.

RELATES TO: KRS 238.550(6)
STATUTORY AUTHORITY: KRS 238 500, 238.515(2), (4), (9), 238.550(1), (2), (3), (4), (5), 238.560(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.500, 238.515, and 238.550 authorize the office to establish and enforce standards for accounting, record keeping and reporting to the office to ensure charitable gaming receipts are properly accounted for. This administrative regulation establishes the minimum requirements for record keeping.

Section 1. General Provisions. (1) Each licensed charitable gaming organization shall prepare and maintain records for each gaming occasion. The gaming occasion records shall be prepared or completed by a volunteer or chairperson of the organization. The gaming occasion records shall not be completed by a bookkeeper for compensation.
(2) Gaming proceeds shall be counted by an officer or a chairperson and the count shall be verified. A count may be verified by a volunteer. The name and signature of the person counting and verifying shall appear on the gaming occasion record.
(3) A gaming occasion record shall contain the date of the gaming occasion, the name and license number of the organization conducting the gaming occasion, and the printed name and signature of the chairperson in charge of the gaming occasion.
(4) A gaming occasion record shall contain the name and signature of the person taking the deposit from the gaming occasion and the name of the person making the deposit, if different from the person taking the deposit.
(5) A gaming occasion record shall contain the name of the person in possession of the start-up cash, and shall list the amount and source of start-up cash.
(6) If any donated prizes are awarded during a gaming occasion, the gaming occasion record shall include a notation of each prize that was donated. In addition, if any item with a fair market value in excess of fifty (50) dollars is donated, the notation for that item must include the following information:
(a) The date the item was received;
(b) The date the item was awarded;
(c) The name of the donor;
(d) The street address, city, and state of the donor;
(e) A description of the donated item; and
(f) The fair market value of the donated item.
(7) On any gaming occasion during which any individual door prize with a fair market value over thirty (30) dollars is awarded, the following information shall be retained with the gaming occasion record:
(a) The name and address of any individual awarded the prize;
(b) The date the prize was awarded;
(c) A description of the prize; and
(d) An acknowledgement by the individual verifying the above information and verifying receipt of the door prize.
(8) A gaming occasion record shall include a deposit reconciliation worksheet which records:
(a) All currency, coins, checks, and credit card receipts available for deposit;
(b) All profit or loss from each gaming activity, all start-up cash, all cash from incomplete pull tab sales, and all other gaming receipts that should be available for deposit; and
(c) Any variance between the amount of currency, coins, checks, and credit card receipts actually available for deposit, and the amount that should be available for deposit according to the gaming occasion records.
(9) The organization shall complete Form CG-01 for each gaming occasion and keep it with the gaming occasion record for that event.
(10) A gaming occasion record shall contain a copy of the gaming occasion program, which shall include a printed listing of products for sale and the price of each product, and all games played and the payout for each game.
(11) A copy of the "house rules" for the gaming occasion shall be kept with the gaming occasion record.
(12) All charitable gaming receipts and records shall be kept separate from noncharitable gaming receipts and records.
(13) All gaming occasion records shall be retained by the organization for a period of three (3) years. Gaming occasion records shall be made available for inspection and audit by the office upon request.
(14) Organizations shall provide records requested by the of-
Section 2. Bingo Paper Sale Records. (1) Bingo paper sale records shall contain the following information:
(a) Attendance determined by headcount of number of people playing bingo;
(b) The type(s) of bingo paper being sold;
(c) The serial number of the set of each type of paper sold;
(d) The starting number of each type of bingo paper available for sale at the beginning of the gaming occasion;
(e) The ending number of each type of bingo paper available for sale at the conclusion of the gaming occasion;
(f) Number of each type of bingo paper given away with the voucher being replaced with a new copy of each type of bingo paper records;
(g) Number of each type of bingo paper destroyed;
(h) The number of each type of bingo paper sold;
(i) The price of each type of bingo paper sold;
(j) The number of pickles, bar, or hot ball games sold;
(k) The price of pickles, bar, or hot ball games and whether the price is per person or per pack;
(l) The number of player pick bingo games sold;
(m) The price of each player pick bingo game sold;
(n) The amount of money expected to be received from the sale of bingo paper, player pick, and pickles, bar, or hot ball for that occasion;
(o) The amount of money actually received from the sale of bingo paper, player pick, and pickles, bar, or hot ball for that occasion;
(p) The cash short or cash over from the sale of bingo paper, pickles, bar, or hot ball, and player pick for that occasion;
(q) The sales report printed from the player pick machine that includes the number of games sold, price for each game, and the amount of money expected from the sale of player pick games for that gaming occasion; and
(r) The printed name and signature of the person responsible for bingo paper sales at that gaming occasion.
(2) Carryover or cumulative bingo game records shall contain the following information:
(a) The name of each progressive bingo game in play;
(b) A description of how the game is awarded at the maximum payout, if one exists;
(c) The amount carried over from the previous occasion;
(d) The receipts from the current occasion;
(e) The amount paid out for the current occasion;
(f) The amount carried forward to the next occasion; and
(g) The printed name and signature of the person responsible for carryover or cumulative bingo game records at that occasion.
Section 3. Bingo Payout Records. (1) Bingo payout records shall contain the following information:
(a) A list of all bingo games that will be played at that gaming occasion;
(b) Each pickle, bar, or hot ball game available to be awarded, including the selected bingo ball associated with each;
(c) Each door prize available to be awarded;
(d) The prize expected or available to be awarded for each bingo game and door prize;
(e) The prize that was actually awarded for each bingo game and door prize;
(f) A notation for the prize awarded for each bingo game and door prize, specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise;
(g) If a voucher was issued for pulltabs, card-minding devices, or bingo paper, or if other merchandise was awarded, the fair market value and the amount paid for the pulltabs, card-minding devices, bingo paper, or other merchandise, and a receipt or other evidence indicating how the pulltabs, card-minding devices, bingo paper, or other merchandise was acquired, if acquired from a normal source of supply;
(h) The total amount of all cash awarded for bingo prizes and door prizes;
(i) The total amount of all checks issued as bingo prizes and door prizes;
(j) The total fair market value of all merchandise awarded for bingo prizes and door prizes;
(k) The total amount of money paid for all merchandise awarded for bingo prizes and door prizes;
(l) A grand total of cash, checks, and fair market value of merchandise awarded for bingo prizes and door prizes, which shall not exceed $5,000;
(m) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check; and
(n) The printed name and signature of the person responsible for bingo payouts during each gaming occasion.
Section 4. Card-minding Device Records. (1) Card-minding device records shall contain the following information:
(a) The type of programs loaded, including the number of facets;
(b) The number of units rented for each type of program;
(c) The number of each type of card-minding device rental given away, with the redeemed voucher attached to the gaming occasion records;
(d) The number of units voided for each type of program;
(e) The price per unit for each type of program;
(f) The amount of money expected to be received from the rental of card-minding devices;
(g) The actual amount of money received from the rental of card-minding devices for that gaming occasion;
(h) The cash short or cash over from the rental of card-minding devices for that gaming occasion;
(i) The total sales activity report;
(j) The printed name and signature of the person responsible for card-minding device rentals at that gaming occasion;
(k) The printed name and signature of the person responsible for program rentals at that gaming occasion;
Section 5. Pulltab Records. (1) Pulltab records shall contain the following information for each game:
(a) The name, serial number, and form number of all games played;
(b) The name of all progressive jackpot games in play during that gaming occasion;
(c) The ticket count for each pulltab game sold;
(d) The price for each ticket;
(e) The prize expected or available to be awarded for each pulltab game, including the progressive jackpot games;
(f) The name, serial number, form number, and quantity of pulltab tickets given away as prizes, excluding those pulltab games manufactured to payout in pulltabs instead of cash. The redeemed voucher shall be attached to the gaming occasion records;
(g) The prize that was actually awarded for each pulltab game, including the progressive jackpot games;
(h) A notation for the prize awarded for each pulltab game specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise;
(i) If a voucher was issued for pulltabs, card-minding devices, or bingo paper, or if other merchandise was awarded, the fair market value and the amount paid for the pulltabs, card-minding devices, bingo paper, or other merchandise;
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(k) The cash short or cash over for each pulltab game;
(l) The total amount of all cash awarded for pulltab prizes;
(m) The total amount of all checks issued as pulltab prizes;
(n) The total fair market value of all merchandise awarded for pulltab prizes;
(o) The total amount of money paid for all merchandise awarded for pulltab prizes;
(p) If a check from the organization's charitable gaming checking account was issued as a pulltab prize instead of cash, the number of the check;
(q) The total amount of money from any incomplete sale of pulltab games; and
(r) The name and signature of the person responsible for the payouts during each gaming occasion.
(2) Progressive pulltab records shall contain the following information:
(a) The name of each progressive pulltab jackpot game in play;
(b) A description of how the game is awarded at the maximum payout;
(c) The amount carried over from the previous occasion;
(d) The receipts from the current occasion;
(e) The amount paid out for the current occasion;
(f) The amount carried forward to the next occasion;
(g) The serial number of all games that contributed to the prize pool, and
(h) The printed name and signature of the person responsible for progressive pulltab games at that occasion.

Section 6. Raffle Records. (1) Raffle records shall contain the following information:
(a) The number of raffle tickets printed;
(b) The sales price for each ticket;
(c) The date raffle ticket sales began;
(d) The date the raffle drawing was held;
(e) A voided raffle ticket or copy of a raffle ticket;
(f) The date or dates that money was collected from the sale of raffle tickets;
(g) The amount of money collected for each date;
(h) The number of ticket stubs collected from the sale of raffle tickets for each date;
(i) The amount of money that should have been collected based on the number of ticket stubs collected for each date;
(j) The amount of cash short or cash over from raffle ticket sales for each date;
(k) The total amount of money collected for the raffle event;
(l) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
(m) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
(n) The total cash short or cash over amount from raffle ticket sales for the raffle event;
(o) A list of all raffle prizes awarded;
(p) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise;
(q) If a voucher was issued for pulltabs, card-minding devices, or bingo paper, or if other merchandise was awarded, the fair market value and the amount paid for the pulltabs, card-minding devices, bingo paper, or other merchandise;
(r) If merchandise was purchased to be awarded, a receipt or other evidence of how the merchandise was acquired;
(s) The total amount of all cash awarded for raffle prizes;
(t) The total amount of all checks issued as raffle prizes;
(u) The total fair market value of all purchased merchandise awarded as raffle prizes;
(v) The total fair market value of all donated merchandise awarded as raffle prizes;
(w) The total amount of money paid for all merchandise awarded as raffle prizes;
(x) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;
(y) The winning ticket stub(s);
(z) A list of all raffle expenses including a copy of all invoices supporting each expense; and
(aa) The printed name and signature of the person responsible for the raffle event records.

Section 7. Charity Fundraising Event Records. (1) Charity fundraising event records for a festival or carnival shall contain the following information:
(a) The name of each type of game of chance played and the rules of each game including the manner in which the game is won and prize awarded;
(b) The price to play each type of game of chance;
(c) The amount of money received from the sale of each type of game of chance;
(d) The grand total of money received from the sale of all games of chance;
(e) The total amount of all cash awarded for each type of game of chance prize and door prize;
(f) The total amount of all checks issued for each type of game of chance prize and door prize;
(g) The total fair market value of all merchandise awarded for each type of game of chance prize and door prize;
(h) The total amount of money paid for all merchandise awarded for each type of game of chance prize and door prize;
(i) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;
(j) If bingo games are conducted, accurate bingo paper sales records, card-minding device records, and bingo payout records;
(k) If pulltabs are sold, accurate pulltab records;
(l) If a raffle is conducted within the period of the charity fundraising event, a listing of the raffle as a type of game of chance along with other games of chance;
(m) If the charity fundraising event has a capital prize raffle for which sales were made outside the charity fundraising event period as well as during the charity fundraising event, accurate raffle records as described in the raffle regulations; and
(n) If the charity fundraising event continues for more than one (1) day, a summary of the required information for each day; and
(o) The printed name(s) and signature(s) of the person(s) responsible for each game of chance conducted at a charity fundraising event.
(2) Special limited game records for a charity fundraising event shall contain:
(a) The name of each game to be played and the rules of each game, including the manner in which the game is won and prize awarded;
(b) The quantity of script, chips, or imitation money the central bank started with prior to any sales, and the corresponding cash amount associated with each denomination of script, chips, or imitation money;
(c) The quantity of script, chips, or imitation money the central bank sold during the charity fundraising event;
(d) The amount of money received by the central bank from the sale of script, chips, or imitation money;
(e) Cash short or cash over from the sale of script, chips, or imitation money;
(f) The quantity of script, chips, or imitation money collected by the payout booth and redeemed for prizes;
(g) A list of all prizes awarded by the payout booth;
(h) A notation for prizes awarded specifying whether each prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise;
(i) If merchandise was awarded, the fair market value and the amount paid for the merchandise and a receipt or other evidence of how the merchandise was acquired;
(j) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;
(k) The printed name(s) and signature(s) of the person(s) responsible for special limited game records at a charity fundraising event.
(3) In the event the central bank becomes low on script, chips, or imitation money to sell at the charity fundraising event or the
Section 8. Special Limited Charity Fundraising Event Records. (1) Special limited charity fundraising event records shall contain the following information for special limited games:
(a) The name of each game to be played and the rules of each game, including the manner in which the game is won and the prize awarded;
(b) The quantity of script, chips, or imitation money the central bank started with prior to any sales, and the corresponding cash amount associated with each denomination of script, chips, or imitation money;
(c) The quantity of script, chips, or imitation money the central bank sold during the special limited charity fundraising event;
(d) The amount of money received by the central bank from the sale of script, chips, or imitation money;
(e) Cash short or cash over from the sale of script, chips, or imitation money;
(f) The quantity of script, chips, or imitation money collected by the payout booth and redeemed for prizes;
(g) Prizes awarded by the payout booth;
(h) A notation for prizes awarded specifying whether each prize was cash, check, or merchandise, and if merchandise, a description of that merchandise;
(i) If merchandise was awarded, the fair market value and the amount paid for the merchandise and a receipt or other evidence of how the merchandise was acquired;
(j) If a check from the organization's charitable gaming checking account is issued as a prize instead of cash, the number of the check and
(k) The printed name(s) and signature(s) of the person(s) responsible for special limited charity fundraising event records.
(2) In the event the central bank becomes low on script, chips, or imitation money to sell at the charity fundraising event or the payout booth becomes low on cash for prize payouts, then an exchange may be performed between the central bank and payout booth. A written receipt documenting the exchange shall be retained by the central bank and the payout booth;
(3) The amount of money corresponding to the script, chips, or imitation money collected by the payout booth shall be compared to the sale of script, chips, or imitation money by the central bank at the conclusion of the special limited charity fundraising event. Any variance should be documented and cash short or cash over determined.
(4) For all tournaments played during special limited charity fundraising events, the special limited charity fundraising event records shall contain the following information in addition to the regular records required at special limited charity fundraising events:
(a) Entry fee per person and the quantity of script, chips, or imitation money issued each person with the corresponding cash amount associated with each denomination of script, chips, or imitation money issued;
(b) Each player's name and address recorded upon payment of entry fee. If additional chips were purchased, it shall be indicated by the purchaser's name and included in gross receipts;
(c) If bingo games are conducted, accurate bingo paper sales records, card-minding device records, and bingo payout records shall be maintained.
(6) If pulltab are sold, accurate pulltab records shall be maintained.

Section 10. Incorporation by Reference. (1) Form CG-Vol, "Charitable Gaming Volunteer Sign Up Sheet (GU05)" is incorporated by reference.
(2) This form may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-2639, 6 a.m. to 4:30 p.m., Tuesday through Friday.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 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 chooses to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of Intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-6528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: The statute requires the organizations to keep accurate records and report regarding their gaming events. However, there is no explanation of what information needs to be recorded and available for audit. This regulation gives guidance to organizations regarding what information is required.
(b) The necessity of this administrative regulation: This regulation is needed to clarify what information should be recorded by the organization at a gaming occasion.
(2) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the office will establish and enforce reasonable standards of for the conduct of charitable gaming and KRS 238.515(4) requires the office to establish standards of accounting, recordkeeping, and reporting. 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, because it explains for the first time the expectations regarding what information should be recorded at a gaming event.
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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: 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 regulation will affect approximately 700 organizations.
(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: There will be some impact, because some organizations do not keep records. It will require the organizations to manage their game in a more professional fashion.
(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initial: 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: Charitable gaming is funded by the regulated community.
(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 fee increase will be necessary to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all organizations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(New Administrative Regulation)

820 KAR 1:125. Gaming inspections.

RELATES TO: KRS 238.515(2)

STATUTORY AUTHORITY: KRS 238.515(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) authorizes the office to enforce reasonable standards for the conduct of charitable gaming. This administrative regulation establishes how the office will enforce the conduct of charitable gaming through inspections.

Section 1. Organizations. An employee for the office may inspect the conduct of charitable gaming by a licensed or exempt organization to ensure that it complies with all the statutes and administrative regulations of the office.

Section 2. Facilities. An employee for the office may inspect the operation of a charitable gaming facility to ensure that it complies with all the statutes and administrative regulations of the office.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2006
FILED WITH LRC: September 12, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 25, 2005, at 9 a.m., at the Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, October 18, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation allows the office to conduct inspections of the game while in progress.
(b) The necessity of this administrative regulation: This regulation is necessary so that organizations and facilities will be clear that this is a required function of the office.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) requires the office to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes, because it clarifies the inspection functions of the office.
(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 regulation will affect approximately 700 organizations and 70 facilities.
(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: There will be very little impact since this regulation codifies current practice.
(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initial: 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: Charitable gaming is funded by the regulated community.
(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 fee increase will be necessary to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all organizations and facilities.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(New Administrative Regulation)

922 KAR 1:540. Registration of a Foreign Adoption.

RELATES TO: KRS 199.011(4), 199.470, 199.475, 199.585,
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U.S.C. 14501-14554

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472

NECESSITY, FUNCTION, AND CONFORMITY: KRS
194A.050(1) authorizes the cabinet to promulgate, administer, and
enforce administrative regulations necessary to operate programs
and fulfill the responsibilities vested in the cabinet. KRS 199.585(1)
requires the cabinet to register, through a certified notice, an original
decree, judgment, or final order of adoption of a child approved
for United States citizenship issued by a court or another govern-
mental authority with appropriate jurisdiction in a foreign country.
KRS 199.472 mandates that the cabinet establish criteria for the
adoption of children by administrative regulation. This administra-
tive regulation establishes a certified notice registering a foreign
adoption in Kentucky.

Section 1. Definitions. (1) "Child" is defined by KRS
199.011(4).

(2) "Foreign adoption" means a decree, judgment, or final or-
der of adoption as specified in KRS 199.585(1).

(3) "IR3" means an immigration visa classification that classi-
ifies the holder as an immediate relative of an United States citizen
in accordance with 8 U.S.C. 1204 and 22 C.F.R. 42.11.

Section 2. Requirements for Certified Notice. (1) In accordance
with KRS 199.585, the cabinet shall issue a certified notice regis-
tering a foreign adoption in Kentucky, if the adoptive parent pre-

vails the following items in hardcopy:

(a) The adopted child's:

1. Certificate of citizenship in accordance with 8 U.S.C. 1431;
or

2. Proof of the child's IR3;

(b) A copy of the original decree, judgment, or final order of
the child's adoption;
or

2. A translated copy of the original decree, judgment, or final order
of the child's adoption, if the copy of the original decree,
judgment, or final order of the child's adoption is not in English; and

(c) "The "DPP-188, Application for Registration of Foreign
Adoption".

(2)(a) The adoptive parent shall submit the items required in
subsection (1) of this section:

1. By certified or registered mail; and

2. To the secretary in care of the Commissioner of the Depart-
ment for Community Based Services; and

(b) The return receipt of certified or registered mail shall be
proof of the filing of the items required in subsection (1) of this
section for a certified notice registering a foreign adoption in Ken-
tucky.

(3) The cabinet shall return to the sender an application if:

(a) The sender's return address is provided; and

(b) The application for a certified notice registering a foreign
adoption in Kentucky:

1. Does not contain the items required in subsection (1) of this
section; and

2. Was not submitted in the manner specified in subsection (2)
of this section.

Section 3. Limitations and Restrictions. (1) In accordance with
KRS 199.585(3), a petition for adoption shall be:

(a) Required for a foreign adoption without an item included in
Section 2(1) of this administrative regulation; and

(b) Filed in the circuit court with the appropriate jurisdiction in
accordance with KRS 199.470 or 199.475.

(2)(a) The certified notice registering a foreign adoption in
Kentucky shall be distinguished from a record of foreign birth; and

(b) An individual may apply for a record of foreign birth in ac-

cordance with KRS 213.056(2) through the Office of Vital Statistics.

Section 4. Record of Certified Foreign Adoptions. (1) The cabinet
shall issue the "DPP-188A, Foreign Adoption Certificate of
Registration" as the certified notice registering a foreign adoption in
Kentucky.

(2) The DPP-188A shall have the same force and effect as a
legal adoption finalized in a circuit court of the Commonwealth of
Kentucky.

(3) The cabinet shall maintain a copy of each certified notice
registering a foreign adoption in Kentucky and supporting docu-
mentation in accordance with KRS 199.585(2).

(4) Within existing appropriations, the cabinet shall make up to
three (3) additional copies of the DPP-188A available to an adop-
tive parent who:

(a) Made an application in accordance with Section 2 of this
administrative regulation; and

(b) Resubmits the DPP-188 to request an additional copy of
the DPP-188A.

Section 5. Incorporation by Reference. (1) The following forms
are incorporated by reference:

(a) "DPP-188, Application for Registration of Foreign Adop-
tion", edition date 12/05; and

(b) "DPP-188A, Foreign Adoption Certificate of Registration",
edition date 12/05.

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Cabinet for Health and Fam-
ily Services, Department for Community Based Services, 275 East
Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8
a.m. to 4:30 p.m.

JAMES W. HOLSGE, Jr. M. D., Secretary

TOM EMBERTON, Jr., Commissioner

MIKE BURNSIDE, Undersecretary

APPROVED BY AGENCY: September 13, 2005

FILED WITH LRC: September 14, 2005 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hear-
ing on this administrative regulation shall be held on October 21,
2005, at 9 a.m. in the Cabinet for Health and Family Services
Auditorium, Health Services Building, 275 East Main Street,
Frankfort, Kentucky. Individuals interested in being heard at this
hearing shall notify this agency in writing by October 14, 2005, five
workdays prior to the hearing, of their intent to attend. If no notifi-
cation 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 ad-
mnistrative regulation. Written comments shall be accepted until
close of business October 31, 2005. Send written notification of
intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275
East Main Street 5W-B, Frankfort, Kentucky 40621, phone 502-
564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood, (502) 564-3556

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-
tive regulation sets forth the procedure to obtain a Foreign Adop-
tion Certificate of Registration.

(b) The necessity of this administrative regulation: This adminis-
trative regulation is necessary to establish a certified notice regis-
tering a foreign adoption in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 199.585(1) requires the cabinet
to register through certified notice an original decree, judgment or
final adoption of a child approved for United States citizenship issue-
d by a court or another governmental authority with appropriate juris-

doction in a foreign country. This administrative regulation assists in
the effective administration of the statues by specifying a pro-
cedure to receive a Foreign Adoption Certificate of Registration.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: KRS 199.472
mandates that the cabinet establish criteria for the adoption of
children. This administrative regulation assists in the effective ad-
mnistration of the statues by specifying the application process to
receive a foreign adoption certificate of registration.

(2) If this is an amendment to an existing administrative regu-

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lation, provide a brief summary of:
(a) How the amendment will change this 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, business, organizations, or state and local governments affected by this administrative regulation: Currently, there is no tracking system to monitor the number of foreign adoptions involving Kentucky families. This is an optional service that is being provided by the cabinet to parents that have chosen to adopt internationally.
(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: Adoptive parents, who choose to utilize this service, will have documentation recognizing the foreign adoption in Kentucky. This documentation may be used to enroll the adopted child in school and activities.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There is no additional cost to the cabinet.
(b) On a continuing basis: There is no additional cost to the Cabinet.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The primary funding source is 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: There are no fees in 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.
(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation will be implemented statewide.
The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 13, 2005, at 10:00 a.m. in Room 149 of the Capitol Annex. Senator Richard Roeding called the meeting to order and the roll call was taken. The minutes of the August 8, 2005 meeting were approved.

Present were:
- Senator Richard "Dick" Roeding, Co-Chair
- Representative Tanya Pullin, Co-Chair
- Senators Alice Kerr and Gary Tapp; Representatives James Bruce and Jon David Reinhardt.
- LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Laura Milam, Karen Howard, Sarah Amburgey, Jennifer Harrison, Ellen Steinberg, and Emily Harkenrider.
- Guests: Charlotte Beason, Sue Darouen, Nathan Goldman, Boating, Nursing, Gerry Buynak, Jeff Ross, Catherine York, Department of Fish and Wildlife Resources; Ellen Benzinger, Commerce Cabinet; Brent O. Combs, Kentucky State Police; Les Renkey, Department of Labor; Carri Banahan, John Lloyd, Julie McPeak, Jay Thompson, D.J. Wasson, Office of Insurance; Tim House, David Reichert, Office of Housing, Buildings and Construction; Steve Davis, Trish Howard, Donna Mullins, Cabinet for Health and Family Services; Angela Kirkland, Stuart Owen, Department for Medicaid; Kathleen Casper, Bill Cooper, Juanita Blackford, Mike Weinrich, Division of Aging; Kathy Adams, Katie Brown, Elizabeth Caywood, Jason Moseley, Mary Ellen Nold, Department for Community Based Services; Mike Gmees, Division of Protection and Permanency; Lawrence Ford, Anthem Blue Cross Blue Shield; Melissa Lawson, Children's Alliance; Ronny Pryor.

The Administrative Regulation Review Subcommittee met on Tuesday, September 13, 2005, and submits this report:

**Administrative Regulations Reviewed by the Subcommittee:**

- **General Government Cabinet:** Board of Nursing: Board
  201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of national certifying organization. Charlotte Beason, Executive Director, and Nathan Goldman, General Counsel, represented the Board.

  In response to a question by Co-Chair Pullin, Ms. Beason stated that the nursing shortage in Kentucky was less severe than in other states. Additionally, Mr. Goldman stated that the Board had implemented new programs to address the issue.

  201 KAR 20.057. Scope and standards of practice of advanced registered nurse practitioners. In response to a question by Co-Chair Roeding, Mr. Goldman stated that this amended administrative regulation updated the scope and standards of practice of advanced registered nurse practitioners to conform to current national standards.

  201 KAR 20:070. Licensure by examination. In response to a question by Chair Roeding, Mr. Goldman stated that this amended administrative regulation established clinical internship requirements for graduates of foreign nursing schools.

  201 KAR 20:095. Retired nursing license status. In response to a question by Senator Tapp, Mr. Goldman stated that this amended administrative regulation made it easier for a nurse with inactive licensure status to resume active status.

- **201 KAR 20:161. Investigation and disposition of complaints. 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; and (2) to amend Sections 2 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

- **201 KAR 20:223. Nursing continuing education provider approval. In response to questions by Co-Chair Roeding, Mr. Goldman stated that this amended administrative regulation simplified the approval process for providers and extended their renewal period from two (2) to five (5) years.**

  201 KAR 20:225. Reinstatement of license.

  201 KAR 20:230. Renewal of licenses. In response to questions by Co-Chair Roeding, Mr. Goldman stated that name changes and licensure renewals were separate processes. This administrative regulation established the licensure renewal process.

  201 KAR 20:370. Applications for licensure and registration.


  201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

  201 KAR 20:480. Licensure of graduates of foreign nursing schools.

- **Commerce Cabinet:** Kentucky Department of Fish and Wildlife: Resources: Fish
  301 KAR 1:015. Boats and motor restrictions. Ellen Benzinger, General Counsel, Jeff Ross, Federal Aid Coordinator, and Gerry Buynak, Program Manager, represented the Cabinet.

  Co-Chair Roeding stated that he appreciated the Department for their work in the recent hurricane Katrina disaster.

  Co-Chair Pullin made a motion, seconded by Representative Bruce, for the Subcommittee to send a letter to the Department commending them for their disaster relief efforts in the Gulf area. Without objection, it was so ordered.

  301 KAR 1:021. Repeal of 301 KAR 1:020, 1:040, 1:056, 1:070, 1:075 and 1:090. In response to a question by Representative Bruce, Mr. Buynak stated that tickling was a traditional fishing method that captured rough fish such as catfish by hand grabbing.

  301 KAR 1:115. Propagation of aquatic organisms.

  301 KAR 1:150. Waters open to commercial fishing. 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; and (2) 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.

- **Justice and Public Safety Cabinet:** Kentucky State Police: Law Enforcement Officers Safety Act of 2004

  Co-Chair Pullin stated that she appreciated the Kentucky State Police for their work in the recent hurricane Katrina disaster.

  Senator Kerr made a motion, seconded by Co-Chair Pullin, for the Subcommittee to send a letter to the Kentucky State Police commending them for their disaster relief efforts in the Gulf area. Without objection, it was so ordered.

  A motion was made and seconded to approve the following amendments: (1) to amend Section 3(a): (a) to require an applicant to submit the notarized statement required by KRS 237.140(2)(c); and (b) to delete indefinite language as required by KRS 15A.223(4)(b); and (c) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A.

  Without objection, and with agreement of the agency, the amendments were approved.

- **Environmental and Public Protection Cabinet:** Department of Labor: Collective Bargaining and Arbitration
  803 KAR 3:060. Procedures for electing and certifying exclu-
sive representatives of police officers employed by urban-county or consolidated local governments and firefighters employed by urban-county governments. Les Renkey, General Counsel, represented the Department.

A motion was made and seconded to approve the following amendments: to amend various sections 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 Public Protection: Office of Insurance: Health Insurance Contracts

806 KAR 17:150. Health benefit plan rate filing requirements. Julie McPeak, General Counsel, Carrie Banahan, Director, and Jay Thompson, Branch Manager, represented the Office.

Ms. Banahan stated that the Office wanted to defer the Subcommittee's consideration of this administrative regulation. Without objection, this administrative regulation was deferred.

806 KAR 17:390. Benefits and disclosures in Medicare supplement insurance policies. A motion was made and seconded to approve the following amendments: to amend various sections 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 17:400. Marketing and sales practices in Medicare supplement insurance policies. A motion was made and seconded to approve the following amendments: (1) to amend Section 10 to correct a citation; and (2) to amend various sections 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 17:420. Rates, premiums and loss ratio requirements in Medicare supplement insurance policies. A motion was made and seconded to approve the following amendments: to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:020. Parts or materials list. David Reichert, General Counsel, and Tim House, Director, represented the Office.

In response to questions by Senator Tapp, Mr. Reichert stated that the amended administrative regulation added new products to the parts or materials list that had been approved by the plumbing code committee. The committee was comprised of seven members with varied industry experience such as engineers, architects, building contractors, and master plumbers. Senator Tapp stated that it was important for the government to listen to industry experts.

A motion was made and seconded to approve the following amendments: to amend Section 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.

815 KAR 20:120. Water supply and distribution. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, 5, 10, 14, 15, 17, and 21 to: (1) comply with the drafting and format requirements of KRS Chapter 13A; and (2) insert appropriate cross-references to other administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:180. Special connections. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2, 3, 4, 5, 7, and 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.

Cabinet for Health and Family Services: Office of Inspector General: Health Services and Facilities

902 KAR 20:320 & E. Psychiatric residential treatment facility operation and services. Steve Davis, Deputy Inspector General, and Dionna Mullins, Assistant Director, represented the Office.

A motion was made and seconded to approve the following amendments: (1) to amend the definition of "Section" in Section 1 to correspond to the federal definition; and (2) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 20:330 & E. Psychiatric residential treatment facilities. A motion was made and seconded to approve the following amendments: (1) to amend Section 14 to increase the temperature range for hot water heaters from 110 to 120 degrees Fahrenheit; and (2) to amend various sections 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 Long Term Care and Community Alternatives: Medicaid Services

907 KAR 1:031 & E. Payments for home health services. Angela Kirkland, Director, and Stuart Owen, Regulation Coordinator, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; and (2) to amend Sections 3 and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:045 & E. Payments for community mental health center services. In response to questions by Representative Bruce, Ms. Kirkland stated that this amended administrative regulation froze the reimbursement rate for community mental health centers at its current rate as a cost containment measure.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; and (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Human Support Services: Division of Aging Services: Aging Services

910 KAR 1:180. Homecare program for the elderly. Kathleen Casper, Social Services Specialist, and Bill Cooper, Director, represented the Division.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to delete a reference to an executive order regarding reorganization; (3) to amend Section 5(1)(c) to clarify qualifications for case managers; (4) to amend the Material Incorporated by Reference to update a form for Homecare Eligibility to match the administrative regulation; and (5) to amend Sections 1, 2, 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.

Division of Policy Development: Department for Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2.015 & E. Supplemental programs for persons who are aged, blind, or have a disability. Jason Moseley, Director, and Elizabeth Caywood, Assistant Director, represented the Division.

In response to questions by Representative Reinhardt, Mr. Moseley stated that this amended administrative regulation increased the standard of need payment and the personal needs allowance for personal care home residents to correspond to the increased rates in the federal Supplemental Security Income (SSI) program.
Department for Community Based Services: Division of Policy Development: Child Welfare

922 KAR 1:520. High risk supplement for resource homes. Jason Moseley, Director, and Elizabeth Caywood, Assistant Director, represented the Division.

In response to a question by Co-Chair Roeding, Mr. Moseley stated that increased educational services and additional therapy were examples of extraordinary care provided by a resource home parent to a foster child with exceptional needs that qualified for the high risk supplement reimbursement. The care was considered extraordinary because normal foster children would not need it.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend the definition of "child" to clarify which KRS statutes defined the term; and (4) to amend Sections 1, 3, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The Subcommittee and the promulgating agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

General Government Cabinet: Board of Dentistry: Board
201 KAR 8:225. Credentialing of dental license.
201 KAR 8:265. Credentialing of dental hygiene license.

Environmental and Public Protection Cabinet: Department of Public Protection: Office of Insurance: Agents, Consultants, Solicitors and Adjusters
806 KAR 9:001. Prelicensing courses of study; instructors.
806 KAR 9:020. False or deceptive names, titles, prohibited.
806 KAR 9:250. Specialty credit insurance producer and managing employee.
806 KAR 9:265. Rental vehicle agent and managing employee.

Cabinet for Health and Family Services: Kentucky Department for Public Health: Division of Adult and Child Health Improvement: Mental and Child Health
902 KAR 4:030 & E. Newborn screening for inborn errors of metabolism and other inherited disorders known as Newborn Screening Program.
902 KAR 4:035 & E. Cost reimbursement for special food products.

Office of Inspector General: Radon
902 KAR 95:010. Definitions for 902 KAR Chapter 95.

The subcommittee adjourned at 10:55 a.m. until October 11, 2005.
INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of August 22, 2005

The following administrative regulation was available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of August 22, 2005, having been referred to the Committee on July 26, 2005, pursuant to KRS 13A.290(6):

201 KAR 9:018

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the August 22, 2005 meeting, which are hereby incorporated by reference.

EDUCATION ASSESSMENT AND ACCOUNTABILITY
REVIEW SUBCOMMITTEE
Meeting of September 7, 2005

The Education Assessment and Accountability Review Subcommittee met on Wednesday, September 7, 2005, and submits this report:

Administrative Regulation Reviewed by the Subcommittee:

703 KAR 5:020 - Formula for Determining School Accountability,
Kevin Noland, General Counsel, represented the Kentucky Board of Education.

Mr. Noland explained that the regulation establishes a single assessment and accountability system with two dimensions; one addressing the requirements of KRS 158.6455 to determine school classifications, and one to conform with the requirements under the federal No Child Left Behind Act of 2001 (NCLB), 20 U.S.C. 6301 et seq.

The proposed administrative regulation:
- Changes dates for a district to notify the Kentucky Department of Education (KDE) that a school’s grade structure is being reconfigured.
- Establishes an alternative means by which a school can be determined to have met its annual measurable objective.
- Replaces as a component of Adequate Yearly Progress (AYP) the standard of a school’s prior-year accountability index with a school’s classification as “progressing” or “meets goal” during the most recent classification period; or, for a school in the “assistance” category, growth in the accountability index at or above the state average for comparably configured schools.
- Establishes an alternative means by which a school’s participation rate may be determined.

There were written comments filed on the regulation. The Kentucky Board of Education filed the Statement of Consideration without amendments.

Mr. Noland explained 703 KAR 5:130 - School District Accountability. This administrative regulation establishes school district eligibility for rewards and procedures for determining assistance and other consequences for districts that have schools determined to be in need of assistance under the assessment and accountability program. It also establishes standards for school districts needed to conform with federal requirements under the “No Child Left Behind Act of 2001”, 20 U.S.C. 6001 et seq.

The proposed amendment:
- Establishes an alternative means by which a district can be determined to have met its annual measurable objective.
- Replaces as a component of Adequate Yearly Progress (AYP) the standard of a district’s prior-year accountability index with a school’s classification as “progressing” or “meets goal” during the most recent classification period; or, for a school in the “assistance” category, growth in the accountability index at or above the state average for comparably configured schools.
- Establishes an alternative means by which a district’s participation rate may be determined.

There were written comments filed on the regulation. The Kentucky Board of Education filed the Statement of Consideration with one technical change. It also filed a letter with the subcommittee on August 10, 2005 requesting another technical change. The subcommittee accepted the change by voice vote.

The subcommittee adjourned at 12:00 Noon.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates
The Locator Index lists all administrative regulations published in VOLUME 32 of the Administrative Register from July, 2005 through June, 2006. 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 31 are those administrative regulations that were originally published in VOLUME 31 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2006 bound Volumes were published.

KRS Index
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 32 of the Administrative Register.

Subject Index
The Subject Index is a general index of administrative regulations published in VOLUME 32 of the Administrative Register, and is mainly broken down by agency.
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**VOLUME 30**

The administrative regulations listed under VOLUME 30 are those administrative regulations that were originally published in Volume 30 issues of the Administrative Registrar but had not yet gone into effect when the 2005 bound Volumes were published.

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**VOLUME 31**

The administrative regulations listed under VOLUME 31 are those administrative regulations that were originally published in Volume 31 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2005 bound Volumes were published.

**EMERGENCY ADMINISTRATIVE REGULATIONS:**

(Note. Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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### VOLUME 32

**EMERGENCY ADMINISTRATIVE REGULATIONS:**

(Note: Emergency regulations filed prior to 6/20/05 expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first. Emergency regulations filed on or after 6/20/05 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.)

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