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MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tenta-
tively scheduled to meet Tuesday, September 12, 2006 at 10
a.m., in Room 154 of the Capitol Annex Building, Frankfort, Ken-
tucky. See tentative agenda on pages 675-677 of this Administrative
Register.
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - September 11, 2006 at 10 a.m. in Room 154, Capitol Annex

GENERAL GOVERNMENT CABINET
Real Estate Commission

Commission
201 KAR 11:011. Definitions for 201 KAR Chapter 11. (E* expired 8/5/2006) (Deferred from April)
201 KAR 11:121. Improper conduct. (E* expired 8/5/2006) (Deferred from April)

Board of Embalmers and Funeral Directors

Board
201 KAR 15:110 & E. Funeral establishment criteria. (E* expires 1/8/2007)

Board of Nursing

Board
201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.
201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.
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Board of Chiropractic Examiners

Board
201 KAR 21:015. Code of ethical conduct. (Not Amended After Comments) (Deferred from April)
201 KAR 21:025. Board; officers, duties. (Deferred from April)
201 KAR 21:031. Board hearings; complaints. (Deferred from April)
201 KAR 21:055. Colleges and universities; accreditation, approval. (Deferred from April)
201 KAR 21:065. Preceptorship program. (Deferred from April)
201 KAR 21:100. Minimum standards for recordkeeping/verification statements. (Deferred from April)

Board of Physical Therapy

Board

COMMERCE CABINET
Department of Fish and Wildlife Resources

Fish
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Game
301 KAR 2:075. Wildlife rehabilitation permit.
301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

Hunting and Fishing
301 KAR 3:022. License, tag and permit fees.

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301 KAR 5:050. Purchasing licenses electronically.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Show and Fair Promotion

Fairs and Shows
302 KAR 15:010. Administration; state aid to local fairs.

Division of Regulation and Inspection
302 KAR 85.010. Requirements to establish fee schedules for calibrations, adjustments, weights and measures.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

General Administrative Procedures
401 KAR 50:010. Definitions for 401 KAR Chapter 50. (Hearing/Written Comments)

Attainment and Maintenance of the National Ambient Air Quality Standards
401 KAR 51:001. Definitions for 401 KAR Chapter 51. (Hearing Held in July)

Permits, Registrations, and Prohibitory Rules
401 KAR 52:001. Definitions for 401 KAR Chapter 52. (Hearing Held in July)

New Source Standards
401 KAR 59:001. Definitions for 401 KAR Chapter 59. (Hearing Held In July)

Existing Source Standards
401 KAR 61:001. Definitions for 401 KAR Chapter 61. (Hearing/Written Comments)

General Standards of Performance
401 KAR 63:001. Definitions for 401 KAR Chapter 63. (Hearing Held In July)

Mobile Source-Related Emissions
401 KAR 65:001. Definitions for 401 KAR Chapter 65. (Hearing Held In July)
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JUSTICE AND PUBLIC SAFETY CABINET
Office of Investigations

Abuse Investigation

Department of Criminal Justice Training

Concealed Deadly Weapons
503 KAR 4:040. Required instructor training.
503 KAR 4:050. Required content and conduct of the applicant training course.

TRANSPORTATION CABINET
Office of Budget and Fiscal Management

Property Acquisition and Uniform Relocation
600 KAR 3:030. Relocation or reconstruction of utility and rail facilities; record keeping and audit requirements.

Department of Highways
Division of Program Performance

Professional Engineering and Related Services
600 KAR 6:010. Definitions of terms used in 600 KAR Chapter 6.
600 KAR 6:020. Transportation Cabinet employee responsibilities in the implementation of KRS 45A.800 to 45A.835.
600 KAR 6:030. Federal requirements.
600 KAR 6:040. Prequalification of firms for professional engineering or related services.
600 KAR 6:050. Procurement bulletins and advertisement for selection of professional firms for engineering or related services.
600 KAR 6:060. Professional Engineering Service Selection Committee.
600 KAR 6:070. Contracting for professional engineering or related services.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Natural Resources
Office of Mine Safety and Licensing

Sanctions and Penalties
805 KAR 8:060 & E. Criteria for the imposition and enforcement of sanctions against licensed premises. (*E* expires 1/8/2007)

Department of Public Protection

Division of Public Protection
Office of Insurance

Health Insurance Contracts
806 KAR 17.520 & E. Reimbursement of optometrists.
806 KAR 17:530. Copayment and coinsurance amounts for services of chiropractors and optometrists.

Kentucky Horse Racing Authority

Thoroughbred Racing
810 KAR 1:089. Jockeys and apprentices. (Hearing/Written Comments)
810 KAR 1:080. International wagering hubs. (Amended After Comments) (Deferred from June)

Kentucky Mine Safety Review

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General

Health Services and Facilities
902 KAR 20.074 & E. Operation and services; outpatient health care center. (*E* expires 12/10/06) (Hearing/Written Comments)
902 KAR 20:390. Paid feeding assistants. (Hearing/Written Comments)

Department for Medicaid Services
Division of Hospital and Provider Operations

Medicaid Services

Division of Administration and Financial Management

Division of Hospital and Provider Operations
907 KAR 1:014 & E. Outpatient hospital services. (*E* expires 12/27/2006)

Division of Physician and Special Services

Division of Long Term Care and Community Alternatives
907 KAR 1:031 & E. Payments for home health services. (*E* expires 12/27/2006)

Division of Physician and Special Services
907 KAR 1:038 & E. Hearing and vision program services. (*E* expires 12/27/2006)

Division of Long Term Care and Disability Services
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Division of Administration and Financial Management


Division of Physician and Special Services


Department for Health and Family Services

Division of Administration and Financial Management


Division of Hospital and Provider Services

Payment and Services


Division of Physician and Special Services

907 KAR 3:125 & E. Chiropractic services and reimbursement.

Division of Administration and Financial Management

907 KAR 3:130 & E. Medical Necessity and clinically appropriate determination basis. (*E* expires 12/27/2006)

Division of Hospitals and Provider Operations

907 KAR 3:191 & E. In-state Inpatient Hospital Special Reimbursement Increase. (*E* expires 12/27/2006)

Department for Mental Health and Mental Retardation Services

Division of Administration and Financial Management

Institutional Care


Department for Community Based Services

Division of Policy Development

Child Support

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

Energy Assistance Program /Weatherization


Day Care

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 timing 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.
VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006
EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, AUGUST 15, 2006

(NOTE: Emergency administrative regulations expire 180 days from the date of filing, or upon replacement, repeal, or withdrawal.)

STATEMENT OF EMERGENCY
16 KAR 7:010E

This emergency administrative regulation is being promulgated to establish new rubrics and assessments for the Kentucky Teacher Internship Program, beginning with the 2006-2007 school year. This action must be taken on an emergency basis in order to use federal grant funds received to assist the Education Professional Standards Board in developing new training materials for university staff who provide training to members of the beginning teacher internship committees as established in KRS 161.030 and to support the development of rubrics and assessment materials for the members of beginning teacher internship committees. An ordinary administrative regulation is not sufficient, as the federal grant used to develop these materials and training for the Kentucky Teacher Internship Program expires on September 30, 2006. An ordinary administrative regulation will not be effective before this date. This emergency administrative regulation shall be replaced by an ordinary administrative regulation that is identical to the emergency administrative regulation. The ordinary administrative regulation was filed simultaneously with the emergency administrative regulation with the Regulations Compiler.

ERNIE E. FLETCHER, Governor
TOM STULL, Chairperson

EDUCATION PROFESSIONAL STANDARDS BOARD
(Emergency Amendment)

16 KAR 7:010E. Kentucky Teacher Internship Program.

RELATES TO: KRS 158.101, 161.028, 161.030, 161.048, 161.095

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030, 161.1222

EFFECTIVE: August 11, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(5) requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. [KRS 161.1222(4) authorizes the Education Professional Standards Board to implement a pilot internship project]. This administrative regulation establishes the requirements for the Kentucky Teacher Internship Program [and the Kentucky Teacher Internship-Pilot Project].

Section 1. Definitions. (1) "Half-time basis" means teaching fifteen (15) hours per week in the intern's area of certification.

(2) "Instructional day" means a day that:
(a) The teacher intern is performing regular teaching responsibilities in an instructional setting, or is completing professional development for compensation from the district or employing school; and
(b) Does not include annual leave, sick leave, or other authorized or unauthorized leave time.


(4) "Teacher intern" means any new teacher or out of state teacher with less than two (2) years of successful teaching experience, preschool through grade twelve (12), who has obtained a provisional certificate and is seeking initial certification in Kentucky.

Section 2. Basis for Professional Judgment by the Beginning Teacher Committee. (1) A teacher intern and the beginning teacher committee shall follow the requirements established in this administrative regulation and in "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants."

(2) In arriving at its professional judgment, the beginning teacher committee shall take into consideration the progress of the teacher intern throughout the school year and, particularly, the level of performance that has been achieved near the end of the internship. The beginning teacher committee shall determine the progress and improvement of the teacher intern, pursuant to KRS 161.030, by:
(a) A systematic observation of classroom performance;
(b) An ongoing review of documented evidence developed by the intern of progress toward demonstration of the applicable standards [portfolio materials or pilot project teacher [Work Sample] that is to be developed by the teacher intern]; and
(c) A review of the teacher intern's response to the suggestions and recommendations made by the beginning teacher committee during its meetings with the teacher intern throughout the internship.

(3) Throughout the internship, the teacher intern and the beginning teacher committee shall utilize the New Teacher Standards for Preparation and Certification established by the Education Professional Standards Board in 16 KAR 1.010. Interns and their committees utilizing the new Teacher Performance Assessment shall use the benchmarks for each standard as outlined in the Teacher Performance Assessment Handbook.

(4) The New Teacher Performance Assessment, the intern shall also demonstrate a Leadership Standard. However, scoring for the Leadership Standard shall not apply to a determination of the intern's success or failure of the internship.

Section 3. Beginning Teacher Committee Membership Appointment. (1)(a) School districts shall maintain a pool of resource teachers and principals, who have successfully completed the Kentucky Teacher Internship Program Committee training in order to assure eligibility for appointment to beginning teacher committees.

(b) The Kentucky Teacher Internship Program Committee training may be approved for up to twelve (12) hours of professional development credit toward the continuing education requirements for resource teachers pursuant to KRS 161.035 and Effective Instructional Leadership Act (EILA) credit for administrators pursuant to KRS 156.101.

(2) The employing school district shall recommend principals and resource teachers for appointments by the Education Professional Standards Board to beginning teacher committees.

(3) If the teacher intern is teaching at a nationally or regionally accredited nonpublic school without a principal, the accrediting organization's guidelines for designating the school head or school leader shall be used by the employing school in making the recommendation for appointment of the principal member. If no guidelines exist, the school shall provide a written rationale for the appointment to the Education Professional Standards Board for approval.

(4) Representatives of the teacher training institutions [institute] shall consult the Education Professional Standards Board with respect to the school districts and the geographical area to be served by teacher educator members on beginning teacher committees. All teacher educators shall have completed the Kentucky Teacher Internship Program Committee training in order to assure eligibility for appointment to beginning teacher committees.

(5) The teacher training institution shall appoint a teacher educator no later than October 1 for the fall semester and February 15 for the spring semester. If the teacher intern is employed after the
data required for appointment of the teacher educator, the teacher training institution shall appoint a teacher educator no later than ten (10) days after being notified by the district of the need for a teacher educator.

(6) If the superintendent or designated nonpublic school head or leader determines that a teacher educator is unsuitable for appointment, the superintendent or designated nonpublic school head or leader [head-er] shall submit a written request for removal to the Education Professional Standards Board. The request shall contain the following:

(a) The facts and circumstances that form the basis for removal for cause; and

(b) The name of a qualified replacement submitted after consultation with the district or employing school Kentucky Teacher Internship Program Coordinator.

(7) The Education Professional Standards Board shall send written notification to the teacher intern, the beginning teacher committee, the superintendent or designated nonpublic school head or leader, and the teacher training institution of its decision regarding the request for removal.

Section 4. Requirements for Time in the Internship and Classroom Assignment. (1) The one (1) year internship shall be completed during one (1) of the following:

(a) No less than 140 Instructional days of employment in a certified position in the intern's area of certification for which the teacher intern receives compensation during one (1) school year; or

(b) Two (2) semesters totaling at least 140 Instructional days of employment in a certified position in the intern's area of certification for which the teacher intern receives compensation in two (2) consecutive school years.

(2) The internship shall be established for each teacher intern whose initial employment begins at any time during the school term except if the date of employment does not allow for completion of at least seventy (70) Instructional days of employment during the school year. If the period of employment is less than seventy (70) Instructional days in a school year, the local school district shall declare an emergency as provided in KRS 161.100, authorizing the superintendent to request an emergency teaching certificate. The employing school district shall be responsible for providing assistance and supervision to the new teacher during the period of employment under an emergency certificate.

(3) The school district or nonpublic school shall complete and submit to the Education Professional Standards Board the Confirmation of Employment in electronic form or in hard copy if the electronic submission system is unavailable. The Confirmation of Employment shall be completed for each teacher intern and submitted to the Education Professional Standards Board. The deadline is before October 15 for a teacher intern participating in the Internship for the fall semester; or

2. On or before February 15 for a teacher intern participating in the internship for the spring semester.

(b) If the teacher intern begins employment after the dates established for submission of the Confirmation of Employment in paragraph (a) of this subsection, the school district or employing school shall submit the Confirmation of Employment in electronic form or in hard copy if the electronic submission system is unavailable within ten (10) days of the date of hire. A one (1) year Internship certificate shall be issued in accordance with the provisions of 16 KAR 2:010 and 16 KAR 4:050.

(c) If the district fails to report verification of enrollment in the internship by the applicable date established in paragraph (a) or (b) of this subsection, and there is insufficient time remaining for the teacher intern to complete the number of days required under subsection (1) of this section, the district shall declare an emergency as provided in KRS 161.100, and the teacher intern shall enroll in the Internship in the next semester of employment when at least seventy (70) Instructional days are available.

(d) Failure to submit [return] the completed Confirmation of Employment or declare an emergency in accordance with paragraph (a) or (b) of this subsection shall:

1. Be a violation of KRS 161.020; and

2. Result in the number of days the teacher intern taught without a valid certificate being included in the out of field report submitted to the Commissioner of the Department of Education in accordance with KRS 161.1221.

(4) A teacher intern may participate in the internship if the intern is teaching on at least a half-time basis. A school district or nonpublic school offering employment to a new teacher for part-time services which do not conform to the definition of half-time basis shall request a waiver from the Education Professional Standards Board staff for the new teacher to participate in the Kentucky Teacher Internship Program. The waiver request shall detail how the part-time employment offered by the district or nonpublic school is commensurate with the half-time basis requirement of this administrative regulation.

(5)(a) Termination or resignation of the internship shall be prohibited unless a written resignation detailing the facts surrounding the resignation is received and approved by:

1. The superintendent or designated nonpublic school head or leader; and

2. The Education Professional Standards Board staff.

(b) A teacher intern who terminates or resigns the Internship without the approval of the Education Professional Standards Board staff shall be recorded as unsuccessfully completing the internship for that school year.

(c) The Internship shall be established in a classroom which corresponds to the certificate of the teacher Intern. An Internship shall not be established in a classroom designated as an alternative school, classroom or program unless the district superintendent or designated nonpublic school head or leader submits a written request for a waiver to the State Board of the Education Professional Standards Board. The request shall include the following:

(a) The type of students that attend the alternative school, classroom or program;

(b) The student selection and placement process;

(c) The level of support for students and faculty provided by the district or nonpublic school;

(d) The degree of administrative support within the program, classroom or school;

(e) The location and facility that houses the program, classroom or school;

(f) The instructional resources [that are] available to the faculty;

(g) The curriculum used by the program, classroom or school;

(h) The manner in which the program, classroom or school collaborates with other schools within the district;

(i) The current faculty and staff positions assigned to the program, classroom or school;

(j) A brief description of how a teacher intern placed in the alternative program, classroom or school could demonstrate that the teacher intern has met all of the applicable [new] teacher standards;

(k) Contact information for an individual who could provide additional information about the request; and

(l) A signed affidavit by the superintendent, the superintendent's designee, or the designated nonpublic school head or leader confirming the information.

(7) The Education Professional Standards Board staff shall grant the waiver if there is a determination that the request and accompanying documentation sufficiently demonstrate that the level of support and services provided to the teacher intern assigned to an alternative school, classroom, or program is equivalent to that provided to a teacher intern placed in a nonalternative setting.

(8) If the waiver is granted, it shall remain in effect for the calendar year during which it is granted.

Section 5. Designation and Duties of Chair; Responsibilities of Resource Teacher, Teacher Intern, and Teacher Educator; Requirements for Timing and Content of Beginning Teacher Commit- tee Meetings. (1) The principal member of the three (3) person beginning teacher committee shall serve as chair and shall be responsible for convening the committee and coordinating its efforts by scheduling observations and committee meetings. The chair shall be responsible for the timely submission of all documents and reports of the beginning teacher committee as required by this administrative regulation. All documents and reports shall
be submitted through the electronic reporting system, or by hard copy if the electronic reporting system is unavailable. In addition, the chair shall:

(a) 1. Make three (3) official observation visits to the teacher intern's classroom with each observation lasting one (1) hour in duration or one (1) class period; or
  2. Make two (2) one (1) hour or one (1) class period observation visits followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lessons;  
(b)  Conduct a lesson plan review prior to each of the three (3) observations and a postobservation conference after each observation;
  (c)  Report progress observed and concerns to the committee at the scheduled committee meetings;
  (d)  Monitor the time that the resource teacher spends with the teacher intern both in and out of class and sign the electronic version of the resource teacher time sheets or the hard copy of the resource teacher time sheets if the electronic reporting system is unavailable; and
  (e)  Ensure that all program policies and procedures are followed.

2. The resource teacher shall be a mentor to the teacher intern and assess the teacher intern's progress in the internship.
   (a)  The resource teacher, upon completion of Kentucky Teacher Internship Program Committee Training and upon appointment, shall begin to assist the teacher intern.
   (b)  The resource teacher shall spend a minimum of twenty (20) hours working with the teacher intern in the classroom setting.

1. As a portion of the twenty (20) hours, the resource teacher shall conduct:
   a. Three (3) official observations with each observation lasting one (1) hour in duration or one (1) class period; or
   b. Two (2) observations lasting one (1) hour in duration or one (1) class period followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lessons.

2. The observations shall be preceded by a postobservation conference and lesson plan review and shall be concluded with a postobservation conference.

3. Pursuant to the resource teacher requirements established in KRS 161.030(7), a resource teacher shall complete at least fifty (50) hours of out-of-class time identified in KRS 161.030 in consultation with the teacher intern to:
   1. Assist the teacher intern in the development of professional growth plan;
   2. Assist the teacher intern in areas identified in the professional growth plan;
   3. Assist the teacher intern with instructional activities such as planning, management techniques, assessment, and parent conferences;
   4. Arrange activities for the teacher intern such as attendance at seminars, conferences, or lectures offering educational assistance commensurate with the teacher intern's professional growth plan;
   5. Continually assess the teacher intern's progress in the internship in relation to each of the new teacher standards; and
   6. Enter and submit data into the online Resource Teacher Time Sheet or the hard copy of that document if the electronic reporting system is unavailable. The document is located within "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants," incorporated by reference.

4. The resource teacher shall divide the consultation time required in paragraph (c) of this subsection into appropriate increments that provide support for the teacher intern throughout the semester. The resource teacher shall not spend the required consultation time with the teacher intern required in school or district-wide meetings, or any other activity for which the resource teacher receives compensation from the district or employing school, to include professional development activity.

5. The teacher intern shall:
   (a) Complete all requirements of the Kentucky Teacher Internship Program as established in KRS 161.030 and this administrative regulation, including compliance with the new teacher standards;
   (b) Attend the orientation, preobservation and postobservation conferences with individual committee members, and all beginning teacher committee meetings;
   (c) Participate with the resource teacher in the fifty (50) hours of consultation time to be spent outside of an instructional setting;
   (d) Cooperate with the resource teacher in completing the twenty (20) hours of instructional observation;
   (e) Complete a professional growth plan (PGP);
   (f) Prepare for three (3) official one (1) hour observations by each committee member during the year, including submitting a written lesson plan to the observer in a timely fashion prior to each visit. Each observation shall be one (1) hour in duration or one (1) class period;
   (g) Develop documentary evidence of progress toward demonstration of the applicable standards [a portfolio or Pilot Project Teacher Work Sample] for presentation and review at committee meetings; and
   (h) Review all electronic documents completed by the beginning teacher committee and affix an electronic signature where required. If the electronic version of the documents are unavailable through the electronic reporting system, the teacher intern shall review and sign hard copies of these documents.

6. The educator shall:
   (a) 1. Make three (3) official observations of the teacher intern with each observation lasting one (1) hour in duration or one (1) class period; or
   2. Make two (2) observations of one (1) hour in duration or one (1) class period, followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lessons;
   (b)  Conduct a lesson plan review prior to each of the three (3) observations and a post-observation conference after each observation; and
   (c)  Report progress observed and concerns to the committee at the scheduled committee meetings;
   (d)  Observations and committee meetings shall be scheduled in accordance with the following:

   (a)  The orientation meeting shall be held prior to the conduct of any formal classroom observations of the teacher intern;
   (b)  The second meeting shall be held between one (1) and sixty (60) instructional days following the orientation meeting and shall have been preceded by classroom observations by all committee members;
   (c)  The third meeting shall be held between sixty-one (61) and 110 instructional days following the orientation meeting and shall have been preceded by a second set of classroom observations by all committee members; and
   (d)  The fourth meeting shall be held between 111 and 140 instructional days following the orientation meeting and shall have been preceded by a third set of classroom observations by all committee members;

3. Committees formed during the spring semester shall establish a meeting schedule that observes the time sequences established in subsection (4) of this section for the full-year teacher interns but which shall span the spring and fall semesters of two (2) school years.

4. (a) Classroom observations conducted by committee members shall be:
   1. Of at least one (1) hour or one (1) class period in duration; and
   2. In the classroom or at the work station of the teacher intern.
   (b) Additional classroom observations may be conducted at the option of the committee.

5. All classroom observations shall be scheduled in advance in order to provide adequate time for preparation by the teacher intern.

6. All members of the committee shall attend all four (4) meetings of the committee.

7. At the orientation meeting of the beginning teacher committee, the following items shall be addressed:
   (a) Expectations on the part of the teacher intern and each committee member;
   (b) Procedures and materials for classroom observations;
   (c) Use of classroom observation data in designing the teacher intern's professional growth plan;
(d) Requirements for the intern for compiling documentary evidence of progress toward demonstration of the applicable standards (portfolio or Pilot Project Teacher Work Sample);
(e) General schedule for the events to take place during the internship program; and
(f) Work of the resource teacher with the teacher intern.

(10)(a) The primary purpose of the second and third committee meetings shall be to provide the teacher intern with information based on classroom observations, review of the intern's documented evidence of progress toward demonstration of the applicable standards (portfolio or Pilot Project Teacher Work Sample), and reports of the resource teacher that shall support the growth of the teacher intern.

(b) The committee shall provide the teacher intern at the second, third, and fourth meetings with a consensus assessment of the teacher intern’s progress in the internship in relation to each of the new teacher standards.

(11) The Professional Growth Plan (PGP) shall be initiated at the second committee meeting.

(12) The third meeting shall include a review of expectations for the performance of the teacher intern, taking into account the reflections of the teacher intern and the committee members, and incorporating these expectations and reflections into the PGP.

(13) The fourth meeting shall include a professional judgment by the committee members on the satisfactory completion of the one (1) year internship. This judgment shall be based upon the teacher intern’s ability to meet the requirements of all new teacher standards.

Section 6. Decision by the Beginning Teacher Committee, Reporting, and Certification Actions (1) The decision of the beginning teacher committee as to satisfactory completion of the internship for all full-year teacher Interns shall be reported by the chair of local school superintendent or other employer and Education Professional Standards Board by May 1 or no later than two (2) months following the final committee meeting, whichever occurs first. For midyear teacher interns completing the internship in December, the final report shall be submitted by December 15. The final report shall be accompanied by the resource teacher time sheets.

(2) If a teacher intern’s performance is judged by the committee to be unsatisfactory, the teacher intern shall have the opportunity to repeat the internship during one (1) additional year contingent upon placement within the period of validity of the statement of eligibility for internship. If the teacher intern does not successfully complete the internship during the period of validity of the statement of eligibility, the teacher intern shall reapply for admission to the remaining one (1) year of internship by meeting the requirements in effect at the time of reapplication for certification.

(3) If the teacher intern is unable to complete the internship within one (1) school year in accordance with the requirements of Section 5 of this administrative regulation, an interim report shall be submitted to the EPSB through the electronic system, or by hard copy if the electronic system is unavailable, within ten (10) days of the date the internship ceases.

(b) Under extraordinary circumstances and with the approval of the EPSB, the teacher intern may continue the internship during a subsequent school year if employed in a public or nonpublic accredited school. Extraordinary circumstances shall include:

1. Serious medical conditions;
2. Temporary disability; or
3. Military deployment.

(c) The provisions of Section 4 of this administrative regulation shall not apply in this situation.

Section 7. Payments to Committee Members. (1) In accordance with the budgetary act, the Education Professional Standards Board shall contract with the local school district, or make other appropriate arrangements, for:

(a) The direct service of a resource teacher to each teacher intern;
(b) Participation in classroom observations and committee meetings; and
(c) The employment of substitute teachers to provide at least twenty (20) clock hours of released time for the resource teacher to observe and assist the teacher intern during normal working hours.

(2) A resource teacher shall:

(a) Not serve as a resource teacher for more than one (1) teacher intern concurrently; and
(b) Be paid a stipend in accordance with subsection (3) of this section.

(3)(a) Except as provided by paragraphs (b) and (c) of this subsection, the stipend shall be:

1. $1,400 for a year of service; and
2. Disbursed in accordance with KRS 161.030(6)(f) on a biennial basis corresponding to the semester in which the mentoring occurred or on an annual basis for full-year interns, with payment being disbursed at the end of the one (1) year internship. The frequency of the disbursement shall be at the option of the district if the resource teacher is serving in a public school district. If the resource teacher is serving in a nonpublic school, the frequency of the disbursement shall be determined by the submission of the resource teacher time sheets.

(b) If the school or school district where the internship takes place fails to submit the time sheets by the date stipulated in Section 6(1) of this administrative regulation, the Education Professional Standards Board shall refuse payment of the stipend.

(c) The stipend shall be prorated if the required number of hours are not performed and documented in legitimate and appropriate pursuit of successful completion of the internship pursuant to the requirements of Section 5(2) of this administrative regulation.

Section 8. Use of the New Teacher Performance Assessment by Internship Participants. (1) Beginning with the 2006-07 school year, and for full-year Interns beginning the Fall of 2007, (as an alternative to participation in the one (1) year Kentucky Teacher Internship Program), a school or district [teacher intern] may elect to require all interns employed to use the new Teacher Performance Assessment in lieu of the traditional internship assessments that were contained within “Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants.”

(2) Beginning January 1, 2008, all school districts and all nonpublic schools participating in the Kentucky Teacher Internship Program shall use the new Teacher Performance Assessment with all Interns beginning their internship in lieu of the traditional internship assessments that were contained within “Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants.”

(3) Participation in the one (1) year Kentucky Teacher Internship Pilot Project authorized by KRS 161.1222.

(4) Application for the pilot project shall be made by completing the KYPEP Pilot Project Application Form or its online equivalent found on the Education Professional Standards Board website at www.kyepsb.net and submitting it to the Education Professional Standards Board. As a prerequisite to participation, the applicant shall have:

(a) A bona fide offer of employment;
(b) Approval for pilot-project participation by the district superintendent or designated nonpublic school head or leader;
(c) Approval for pilot-project participation by the principal or designated nonpublic school head or leader; and
(d) A resource teacher assigned in accordance with the provisions of this administrative regulation and KRS 161.030.

(5) The Education Professional Standards Board shall select participants based upon a representative sample, taking into consideration the following criteria:

(a) Geographic location of the internship;
(b) The teacher training institution from which the applicant graduated;
(c) The grade level to be taught by the applicant;
(d) The content area to be taught by the applicant; and
(e) The route by which the applicant sought certification, traditional or alternative.

(6) Incentives for pilot-project participants shall include the following:

(a) Opportunities for the teacher intern to observe experienced...
within fifteen (15) days of receipt.

(3) The appeals committee shall review the written appeal by the teacher intern, all beginning teacher committee reports, any additional documentation that accompanied the final report, and any written responses from the members of the beginning teacher committee.

(b) The appeals committee shall base its recommendation upon the following requirements:

1. Evidence of the teacher intern’s ability to meet the requirements of the new teacher standards;
2. Appropriate documentation of at least twenty (20) hours in the instructional setting and fifty (50) hours outside normal working hours spent by the resource teacher in assisting the teacher intern;
3. Assignment of beginning teacher committee members in accordance with legal requirements;
4. Compliance with the requirements for the timing, content, reporting, and signing of teacher intern performance records, meeting and observation forms, and resource teacher time sheets; and
5. Agreement between teacher intern performance records, professional growth plans, beginning teacher committee meetings, and the final decision of the committee.

(c) The appeals committee shall make a recommendation to the Education Professional Standards Board on the appeal within sixty (60) days following the receipt of the appeal, unless good cause exists for additional time. The Education Professional Standards Board shall issue a final decision in each appeal reviewed by the appeals committee. The Education Professional Standards Board may consider the appeals committee recommendation and the records reviewed by the appeals committee in issuing its decision.

(5) If the decision of the beginning teacher committee is not upheld, the Education Professional Standards Board shall issue the appropriate certificate to the teacher intern.

(6) If the decision of the beginning teacher committee is upheld, the Education Professional Standards Board shall issue an order of judgment for the intern, unless:

(a) The teacher intern has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program; or
(b) The period of validity of the statement of eligibility has expired.

(7) If, during the appeal process, it becomes evident that the beginning teacher committee has committed some procedural violation during the internship which makes it impossible to determine if the teacher intern has in fact been unsuccessful, the Education Professional Standards Board may nullify the internship and allow the teacher intern to repeat the internship without penalty.

(8) If the teacher intern is not satisfied with the decision of the board based on the recommendation of the appeals committee, the teacher intern may request a formal hearing under the provisions of KRS Chapter 13B. The request shall be filed in writing with the Executive Director of the Education Professional Standards Board within fifteen (15) calendar days of the date the board’s decision is received by the teacher intern.

(9) In notifying the teacher intern of the board’s decision, the Education Professional Standards Board shall send the decision of the board to the last known address of the teacher intern. If the teacher intern fails to notify the Education Professional Standards Board of an updated or correct address, or refuses to claim the certified mail when presented, the request for a hearing shall be filed in writing with the Executive Director of the Education Professional Standards Board within (20) calendar days of the date the board’s decision is mailed to the teacher intern by certified mail.

Section 10. A teacher intern who has not successfully completed the internship and has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program shall not be eligible for a Kentucky teaching certificate under this administrative regulation.

Section 11. An intern serving the Internship in Interdisciplinary Early Childhood Education (IECE) must successfully demonstrate the new teacher standards as adapted to the IECE standards and shall utilize the IECE Observation Instrument incorporated by ref-
Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(b) "Statement of Eligibility/Confirmation of Employment form," revised November 2004;
(c) "KTIP Pilot Project Application Form," June 2003 edition;
(e) KTIP TPA Intern Performance Record, June 2008 edition
(f) KTIP Pilot Project Intern Performance Record, August 2006 edition;
(g) (ff) IECCE Observation Instrument*, January 2005 edition.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.
CONTACT PERSON. Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements, duties of participants, timelines, and assessment of the Kentucky Teacher Internship Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to codify the rights, duties, and responsibilities of all participants in the Kentucky Teacher Internship Program.
(c) How the administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 establishes the Education Professional Standards Board and empowers the Education Professional Standards Board to establish the standards and requirements for maintaining a teaching requirement. KRS 161.030(5) provides that all new teachers and out-of-state teachers with less than 2 years of experience shall serve a 1-year internship. This administrative regulation complies with the requirements of KRS 161.030 by establishing appropriate timelines, assessments, and due process procedures for the 1-year internship.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation will assist in effective administration of the statute by complying with the requirements of KRS 161.030 by establishing the requirements, duties of participants, timelines, and assessments of the Kentucky Teacher Internship Program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by establishing the specific dates for transition to a new scoring rubric and system of assessment for the Kentucky Teacher Internship Program. The amendment also implements training requirements for members of the Kentucky Teacher Internship Committee. This amendment removes references to and requirements of the Kentucky Teacher Internship Pilot Project which has ended. Any other proposed changes to this regulation are designed to improve the clarity of the regulation.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide notice to the participants of the changes to the scoring rubrics and assessments and to establish a reasonable transition timeline by which each school district must convert to using the new assessment procedures.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with the requirements of KRS 161.030 by establishing appropriate timelines, assessment, and due process procedures for the Kentucky Teacher Internship Program.
(d) How the amendment will assist in the effective administration of the statute: The amendment will improve the assessment currently used in the Kentucky Teacher Internship Program, making the internship a more beneficial experience for the Interns.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 3,000 applicants seeking initial teaching certification in Kentucky, 175 valid school districts, dozens of private schools along with their staff, and the 28 university and college educator preparation programs.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts and private schools will have to ensure that their staff, who participate in the Kentucky Teacher Internship Program are trained to use the new scoring rubrics and assessments. The university and college preparation programs may choose to incorporate the new scoring rubrics and assessments into their programs. Regional universities are required by KRS 161.030 to provide training for the internship committee members. Trainers from these universities will need to receive training of the new materials and processes.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by this regulation. The Education Professional Standards Board will bear the cost of training all participants in the Kentucky Teacher Internship Program.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The new scoring rubrics and assessments will provide the Intern with more feedback. The new assessments focus on student learning and assessment and provide the Intern with valuable classroom skills. School districts will benefit from well-trained beginning teachers.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: $5,000,000
(b) On a continuing basis: $5,000,000
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds provided by the GA for the Kentucky Teacher Internship Program.
(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 increased any fees: This administrative regulation does not establish any fees, or directly or indirectly increase fees.
(8) TIERING: Is tiering applied? Yes, tiering is applied in the regulation to allow for transition from the former rubrics and assessments to the new rubrics and assessments. Tiering is used to ensure that school districts will have sufficient time to allow their staff participating in the Kentucky Teacher Internship Program to be properly trained in the new procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government
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including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1) and 161.030.

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

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

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

(c) How much will it cost to administer this program for the first year? There should be no revenue generated.

(d) How much will it cost to administer this program for subsequent years? There should be no revenue generated.

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

Revenues (+/-): Expenditures (+/-):

Other Explanations:

STATEMENT OF EMERGENCY
200 KAR 6:045E

This emergency administrative regulation is necessary to repeal an administrative regulation that conflicts with EO 2006-807, signed by the Governor on July 11, 2006, to prohibit smoking in office buildings and common areas occupied by executive branch agencies effective August 1, 2006. This emergency administrative regulation must be placed into effect immediately in order to remove conflicting provisions of law, so as not to cause the public confusion. An ordinary administrative regulation is not sufficient, because the Executive Order goes into effect on August 1, 2006. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation.

ERNEST L. FLETCHER, Governor
JOHN R. FARRIS, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Emergency Repealer)


RELATES TO: KRS 61.165
STATUTORY AUTHORITY: KRS 56.463(4), (9)
EFFECTIVE: August 7, 2006.
NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 61.165, the Governor executed EO 2006-807 to prohibit smoking in office buildings and common areas occupied by executive branch employees effective August 1, 2006. Therefore, this administrative regulation is no longer valid and is being repealed.

Section 1. 200 KAR 6 045 is hereby repealed.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: August 2, 2006
FILED WITH LRC: August 7, 2006 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed emergency administrative regulation shall be held on September 27, 2006, at 10 a.m. in Room 388 Capitol Annex, 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 the required 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 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Angela Robinson, Staff Assistant, Finance and Administration Cabinet, Office of Legislative Services, Room 195-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-1240, ext. 242, fax (502) 564-3654.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 200 KAR 8 045. Control of smoking in state-owned buildings and leased space occupied by executive branch agencies.
(b) The necessity of this administrative regulation: In accordance with KRS 61.165, the Governor executed EO 2006-807 to prohibit smoking in office buildings and common areas occupied by executive branch employees effective August 1, 2006. Therefore, this administrative regulation is no longer valid and must be repealed.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 56.463(4) vests In the Finance and Administration Cabinet the power to control the use of any real property owned or otherwise held by the Commonwealth of Kentucky, or any state agency. KRS 56.463(9) authorizes the Finance and Administration Cabinet to promulgate administrative regulations to govern control of real property owned or occupied by executive branch agencies of the Commonwealth.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation, which repeals a regulation currently in effect which conflicts with recently-enacted legislation, will remove conflicting provisions of law.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: 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 all executive branch agencies of state government and persons, including the general public, who may occupy or visit buildings occupied by executive branch agencies.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Since this regulation is a repealer, no action is necessary.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There will be no cost involved in complying with the regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A. This is a repealer, which involves no compliance.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There will be no cost to implement the regulation.
(b) On a continuing basis: There will be no cost to implement the regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No funding is required.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish or increase any fees.
(9) TIERING: Is tiering applied? Tiering was not applied, because this regulation is a repealer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All executive branch agencies or state government will be impacted.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 56.483(4), (8) and 61.165.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will have no effect on expenditures or revenues of state government.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? There will be no cost involved with this regulation.
(d) How much will it cost to administer this program for subsequent years? There will be no cost involved with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (4-7):
Expenditures (4-7):
Other Explanation:

STATEMENT OF EMERGENCY
302 KAR 29:050E

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 to protect the health and well being of the state’s students and school staff. 302 KAR 29:050 currently requires each school district and child day care center to implement an integrated pest management program with a primary goal of controlling dangerous and destructive pests by the judicious use of pesticides and to have a system of notification for pesticide applications. It is necessary to promulgate this administrative regulation on an emergency basis, because the normal process would not allow this administrative regulation to take effect until well after the start of the school year. Section 12 of the administrative regulation requires at the start of each semester or school year segment a verifiable notice shall be sent or given to all staff members, health professionals, and parents or guardians of school children concerning twenty-four (24) hour advance notification of pesticide applications. The notification provision is unwisely and ambiguous, creates a hardship on the school system or day care center, and does not provide adequate protection to students and staff from pesticide applications. This proposed emergency administrative regulation will better define and streamline notice requirements, is less of a burden on school systems, and will result in better protection of the health and well being of day care children, students, and school staff in the event of a pesticide application. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. The ordinary administrative regulation was filed with the regulations compiler on July 24, 2006, 2006.

ERNIE FLETCHER, Governor
RICHIE FARMER, Commissioner

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Environmental Services
(Emergency Amendment)

302 KAR 29:050E. Commercial structural pest control and fumigation.

RELATES TO: KRS Chapter 217B
STATUTORY AUTHORITY: KRS 217B.050, 217B.530
EFFECTIVE: July 24, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.515 requires that any person engaging in structural pest control be licensed. This administrative regulation establishes requirements applicable to the licensure and practice of commercial structural pest control and fumigation.

Section 1. Applicability. A person shall not engage in commercial structural pest control or fumigation without first obtaining a license from the department. A person may apply for a license in one (1) or more of the following categories:
(1) Commercial structural pest control applicator;
(2) Commercial structural pest control manager;
(3) Commercial structural fumigation applicator;
(4) Commercial structural fumigation manager; or
(5) Pesticide sales agent.

Section 2. License Application. (1) All applicants for applicator or manager licenses shall provide the following:
(a) A completed "Commercial Structural Pest Control Examination Application";
(b) A statement from a state or local law enforcement agency that the applicant has never been convicted of fraud, misrepresentation, or a felony;
(c) College transcripts if applicable; and
(d) Written verification of pesticide work experience, pursuant to KRS 217B.520
(2) All applications for applicator or manager examinations shall be sworn to and notarized.
(3) Pursuant to KRS 217B 525(1), all applications for applicator or manager licenses shall be postmarked thirty (30) days prior to the next scheduled testing date. Any application received after the thirty (30) day deadline shall be returned.
(4) Any applicant failing to submit a complete application thirty (30) days prior to the scheduled testing date shall not be allowed to test.
(5) Any false or misleading statements made in a license application shall be grounds to deny or revoke the license.
(6) The application of any applicant convicted of a felony shall require approval by the board.
(7) The manager’s license examinations shall be given the second Tuesday of each month at a location specified by the department. If the second Tuesday falls on a holiday, the examination shall be given on the following Tuesday.
(8) The manager’s license examination shall be timed and shall be completed within two (2) hours.

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Section 3. License Renewal. (1) Each license shall expire on June 30 of each year.
(2) Failure to submit, by July 1 of each year, a completed renewal registration form with a fee of $100 for each place of business maintained in Kentucky, shall result in the lapse of the license.
(3) Any license holder who fails to submit a completed renewal registration form and the required fee by July 1 of each year, or whose license has been suspended or revoked, shall be required to take and pass a manager or applicant licensing examination before a new license may be issued.
(4) At the time of license renewal, each company shall submit to the department a list with the following information on each employee:
   (a) Name, address, and home telephone number;
   (b) Social Security number; and
   (c) Job title.
(5) Within thirty (30) days of the addition or termination of an employee, the company shall submit to the department the information required in subsection (4) of this section for each new or terminated employee.

Section 4. Change of Address Notices. Each license holder shall notify the department of any change of address within ten (10) days after such change has been made.

Section 5. Treatment for Wood-destroying Organisms. Unless the structure is standard, the following standards shall apply:
(1) Treatment measures taken for the prevention or control of wood-destroying organisms shall be based upon an inspection of the structure.
(2) Termite treatment measures. The following standards shall apply for the treatment of all structures for the control or prevention of subterranean termite infestations:
   (a) The selection and use of soil-applied liquid termiticides, termite bait systems, wood treatments, or any other product used for control of wood-destroying organisms shall be in accordance with directions on the product label; and
   1. Loose cellulose debris of such size as can be raked from beneath structures shall be removed; and
   2. All accessible termite tubes except in the case where a component of a termite baiting system is affixed to termite tubes shall be removed.
   (b) Termite pretreatments shall be carried out in accordance with label directions of the product used and shall not be applied at less than label directions.
   (c) Any alternative termite treatment measures or new technology in termite control with less than five (5) years efficacy data shall receive prior written approval from the department before the measures and technology may be registered and used. All alternative termite treatment measures or new technology in termite treatments shall be applied in accordance with label directions.
(3) Powderpost beetle and old house borer treatment measures:
   (a) Treatment for the control of powderpost beetle or old house borer infestations may be performed by spraying or painting infested and adjacent areas with a pesticide labeled for their control; and
   (b) Fumigation by licensed fumigators may be used to control powderpost beetle or old house borer infestations if other control measures have failed or are inappropriate.
(4) Requirements for prevention and control of wood-destroying fungi. The following are the minimum requirements for control of wood-destroying fungi in crawl space areas or other areas of buildings after the buildings have been constructed:
   (a) Determine moisture content of joists, sills, and subfloor in the building. If excess dampness from the soil under a building contributes to moisture readings above twenty (20) percent, the applicator shall:
      1. Install a vapor barrier over approximately seventy (70) percent of the soil;
      2. Install additional ventilation so there is at least one (1) square foot of vent space per 150 square feet of crawl space area without a vapor barrier;
      3. Install vents to give cross ventilation with a vapor barrier;
      4. Improve drainage;
      5. Waterproof the foundation; or
      6. Any combination of the above.
   (b) The application of fungicides under the structure may be used in the control of existing decay problems under the following circumstances:
      1. Spot treatment may be performed for areas with twenty (20) percent or above moisture readings.
      2. Complete liquid treatment may only be performed in conjunction with paragraph (a) of this subsection if moisture readings are above twenty (20) percent in four (4) separate areas of a structure. Separate areas of a structure shall be:
         a. Left front;
         b. Right front;
         c. Left rear;
         d. Right rear;
         e. Left center; and
         f. Right center. Moisture readings shall be recorded on a graph at the time of original sale of treatment. If a structure qualifies with four (4) moisture readings, a moisture control treatment shall be performed as defined in 302 KAR 29:010(22).

Section 6. Wood-destroying Organism Reports. All persons holding a commercial structural pest control applicator's license shall be required to submit to the department a monthly report of all work done for control or prevention of wood-destroying organisms. Each office or branch office shall file a separate report. Reports shall be made on the "Monthly Report of Wood-Destroying Organism Treatments" form and received by the department no later than the 15th of the month following treatment. All reports shall be signed by the licensed applicator or authorized agent for that company. Upon performance of tests for control or prevention of wood-destroying organisms, a contract shall be made between the company and the property owner. This shall be, at minimum, a duplicate contract, one (1) copy being issued to the property owner and one (1) copy retained by the company.

Section 7. Consumer Disclosure. All contracts issued shall be accompanied by a consumer disclosure and a graph.

Section 8. Inspections by the Department. At times as he may deem desirable, the commissioner or his authorized representative shall examine properties treated for the purpose of determining compliance with treatment standards in Section 5 of this administration regulation. The pest control operator shall accompany the inspector on the initial inspection unless requested by the department. If violations are found, the license holder shall be notified and given a reasonable length of time in which to abate the violations. If the license holder neglects or refuses to abate the violations, his license shall be suspended, as provided by KRS 217B.545, except for good cause shown. While his license is suspended, the license holder shall be required to retreat all properties on which a violation has been found, but shall not otherwise service any current contracts or solicit any new business. He shall notify the department of the dates of all reexaminations and retreatments. When all properties previously reported in an unsatisfactory condition have been reexamined and retreated, the department shall then make the reinspections at its earliest convenience. If the department, on reinspection, finds all the properties in satisfactory condition, the suspension shall be removed. Otherwise, the license shall be permanently revoked.

Section 9. Rodent Control. Since most rodenticides are toxic to humans and domestic animals, care shall be exercised and precautionary steps taken to avoid accidental poisoning of human beings and domestic animals. Rodenticides shall be used only according to label directions.

Section 10. Fumigation. (1) Fumigation crew. For purposes of
safety, at least two (2) individuals shall compose a crew for the release of any fumigant or fumigants and no fumigation operation shall be conducted unless at least two (2) individuals shall work jointly and concurrently in the release of a fumigant or fumigants. This subsection shall not apply to spot fumigation.

(2) Official notice of fumigation. Each license or certification holder, before performing general fumigation in any structure or enclosed space, shall notify in writing, the fire department and the police department having jurisdiction over the location where the fumigation operation is to be performed. This written information shall be given to each fire department and police department no later than three (3) hours prior to the time set forth in the notice for the release of the fumigant. A shorter time for filing written notice of fumigation of vessels, aircraft, boxcars, trucks or common carriers shall be permitted, and the time for the notification shall only be in advance of the fumigating operation. The notice shall in each and every case give the following information:

(a) Location of structure or enclosed space to be fumigated as well as its character and use;
(b) The fumigant to be used;
(c) The date and time of release of fumigant and approximate exposure period; and
(d) The name and day and night telephone numbers of the operator in charge.

(3) If trucks, boxcars, or other common carriers are in transit during the fumigation operation, the carrier and the receiver shall be notified that fumigation has taken place. Other than trucks, boxcars, or other common carriers, this section shall not apply to spot fumigation.

(4) Structures to be vacant. Human beings or domestic animals shall not occupy the structure to be fumigated, or any part or parts thereof, during the period of fumigation. In addition, structures or enclosed spaces which are physically joined to or in contact with the structure to be fumigated shall not be occupied by human beings or domestic animals during the period of fumigation. It shall be the duty of the operator in charge to make a careful examination of all adjacent structures to be fumigated and structures or enclosed spaces physically joined to or in contact with the structure, to verify that no human beings or domestic animals are remaining in the structure and that all necessary precautions have been taken to safeguard the lives and health of all persons.

(5) Notice of warning shall be served upon the occupants of the structure or enclosed space to be fumigated no later than three (3) hours in advance of any fumigation operation by leaving the notice with a responsible adult person or by attaching the notice in a conspicuous manner on the entrance or entrances of the structures or enclosed spaces occupied by human beings.

(6) The operator in charge shall make a personal inspection and examination of the structure or enclosed space to be fumigated.

(7) Danger signs. Prior to releasing the fumigant, warning signs shall be posted at the ground level on all doors or entrances as follows:

<table>
<thead>
<tr>
<th>Danger</th>
<th>Fumigation with Name of Fumigant</th>
<th>Deadly Poison</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Skull and Crossbones)</td>
<td>(Skull and Crossbones)</td>
<td>All persons are warned to keep away</td>
</tr>
</tbody>
</table>

Name of Fumigator: [Name]
Address: [Address]
Operator in Charge: [Name]
Day Phone: [Number]
Night Phone: [Number]
The sign shall be printed in indelible red ink or insoluble paint on a white background. The words "danger" and "deadly poison" shall be in block letters two (2) inches high and all other letters shall be in proportion.

(8) Final pregumigation inspection. Immediately before the fumigant is to be released, the operator in charge shall then make a final inspection and shall ascertain the followings:

(a) That all preparations have been completed;
(b) That no human beings or domestic animals are present within the structure or enclosed space to be fumigated, or in any adjacent structures or enclosed spaces that were to be vacated because of danger from the fumigation operation;
(c) That no open fires or open flames, pilot lights or oil lamps are burning;
(d) That all personnel engaged in the fumigation operation are outside the structure or enclosed space to be fumigated unless pregumigation inspection of the fumigant requires personnel to be within the enclosed space at the time of application; and
(e) That all doors, windows, and all other means of access have been locked, barred, or guarded. All doors or other entrances which can be opened from the outside shall be locked.

(9) Guards and watchmen. During the period of fumigation and until the structure has been ventilated and declared safe, a capable, alert watchman or guard, or watchmen and guards, shall remain or duty at the structure or enclosed space being fumigated. One (1) guard or watchman shall be considered sufficient for each fumigation operation unless, in the judgment of the operator in charge, the conditions and circumstances necessitate additional guards or watchmen. It shall be the duty of said individual(s) to prevent the entrance of unauthorized personnel into the structure or enclosed space during exposure periods. Any structure or enclosed space is being ventilated after the exposure period. Spot fumigation shall not require a guard or watchman, unless deemed necessary in the judgment of the operator in charge. If a warning agent is used, the above subsection shall not apply unless specified by the label.

(10) Declaring structure or enclosed space fumigated safe for reoccupancy. The operator in charge shall not permit or allow any unauthorized person to enter the structure or enclosed space fumigated until he has ascertained that it is safe for human occupancy.

(11) Spot fumigation. Spot fumigation may be performed by persons under the full-time supervision of a person certified to apply fumigants. Spot fumigation may be performed without the posting of guards as required for general fumigation. This shall not relieve the operator in charge of the duty to comply with all other safety precautions and requirements.

(12) The following procedures shall not be considered fumigation operations if nonrestricted use pesticides are used according to label directions:

(a) Aerosol dispersions; and
(b) Any equipment or device which produces a fog, smoke, or mist.

Section 11. Structural Pest Control and Fumigation Licenses.

(1) Persons holding general pest and wood-destroying organism or fumigation licenses may continue to do business in those categories of pest control for which they are licensed under KRS 217B.515(1)(b). A general pest and wood-destroying organism or fumigation certification shall not be a manager's or applicant's license and shall not entitle the holder to engage in business in all the categories that a manager or applicant may engage.

(2) Commercial structural pest control or fumigation licenses shall be renewed by June 30 of each year and shall be subject to all the terms and conditions of other licenses issued under this administrative regulation. These licenses may be modified, suspended, revoked for the same reasons, and using the same procedures, that a manager's or applicant's license may be modified, suspended, or revoked. These license holders shall meet the application standards and obey the requirements for contracting, recordkeeping, and reporting, established by KRS 217B.150 and by 302 KAR 9:020.

(3) A person holding a general pest and wood-destroying organism or fumigation license shall be, by reason of KRS 217B.180(3), certified to purchase or use restricted-use pesticides. This does not relieve them from obtaining certification under the federal law as contained in the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 11. The certification of persons certified under KRS 217B.180(3) may be modified, suspended, or revoked pursuant to 302 KAR 9:020. To maintain certification, persons certified pursuant to KRS 217B.180(3) shall meet the requirements of 302 KAR 29:070.
Section 12. Pesticide Application in Schools. Each school district shall be required to implement an integrated pest management program with a primary goal of controlling dangerous and destructive pests with the judicious use of pesticides. An integrated pest management program shall include the following:

(1) Advance notification of pesticide use:
   (a) In the event a pesticide is to be applied in or around a school, an advance notification of pesticide use shall be given or sent at least twenty-four (24) hours prior to the pesticide application to all staff members, health professionals assigned to provide services at the school, and parents or guardians of students enrolled in the school. Such notice shall not be given if the pesticide use is to take place during a time the school is not in session, or the students and staff members are not present on the school grounds at least forty-eight (48) hours after the pesticide application. At the start of each semester or school year segment a verifiable notice shall be sent or given to all staff members, health professionals, and parents or guardians of school children concerning twenty-four (24)-hour advance notification of pesticide application.
   (b) A master copy of the notification shall be maintained by the school in a file marked IPM for twenty-four (24) months after the notice is issued and shall be subject to inspection upon request by Division of Environmental Services personnel [Maintain a registry of those requesting advance notification].
   (2) The notification shall include the following:
      (a) The [anticipated] date of possible pesticide application—If specific circumstances arise and the advance notice is not provided as required, such as the emergency application of pesticides to control organisms that pose an immediate health threat or that may be disruptive to a normal learning environment, the school shall provide the notice as soon as possible. In this situation, the notice shall explain the reasons why advance notice was not provided and what pesticide was applied;
      (b) A description of the general location of the pesticide application;
      (c) The routine scheduled service—a description of pests treated (encountered), the brand name of the pesticides applied, including the [a] list of active ingredients, the [and] pesticide application method; and
      (d) A telephone number that parents and staff can use to contact the school for more information.
   (3) If specific circumstances arise and advance notice cannot not be provided as required, such as the emergency application of pesticides to control organisms that pose an immediate health threat, the school shall provide the notice as soon as possible. In this situation, the notice shall explain the reasons why advance notice was not provided and shall also include the information required in subsection (2) through (d) of this section.
   (4) The certified applicator, if other than an employee of the school, shall furnish all items required in subsection 2 of this section a minimum of twenty-four (24) hours prior to application of a pesticide, allowing the school ample time to make notification, if applicable.

(5) [63] Qualifications for pesticide applicators. Persons who apply pesticides in schools shall be certified under Category 7(a), General Pest and Wood-destroying Organisms, and Category 7(b), Integrated Pest Management, to apply pesticides. Applicants currently holding a Category 7(a) certification on the effective date of this administrative regulation shall receive their Category 7(b) certification without additional examination.

(6) [64] Exemptions. This policy shall not apply to application of the following types of pesticides:
   (a) Germicides, disinfectants, bactericides, sanitizing agents, water purifiers, and swimming pool chemicals used in normal cleaning activities;
   (b) Personal Insect repellents;
   (c) Human or animal ectoparasite control products administered by qualified health professionals or veterinarians; and
   (d) Manufactured paste or gel bait insecticides placed in areas where humans or pets do not have reasonable access to the bait.

Section 13. Pesticide Application for Health Care Centers. Qualifications. Pesticide applicators who apply pesticides in health care centers shall be certified in 7(a), General Pest and Wood-destroying Organisms, and 7(b), Integrated Pest Management, to apply pesticides. Applicants currently holding a Category 7(a) certification on the effective date of this administrative regulation shall receive their Category 7(b) certification without additional examination.

Section 14. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Commercial Structural Pest Control Examination Application";
   (b) "Monthly Report of Wood-Destroying Organism Treatments".
   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: July 24, 2006
FILED WITH LRC: July 24, 2006 at 3 p.m.
CONTACT PERSON: Mark Farrow, General Counsel, 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:
   (b) The necessity of this administrative regulation:
   (c) How this administrative regulation 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:
   (e) How the amendment conforms to the content of the authorizing statutes:

(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:
   (b) The necessity of the amendment:
   (c) How the amendment assists in the effective administration of the statutes:
   (d) How the amendment will assist in the effective administration of the statutes:

(3) If this is an amendment to an existing administrative regulation:

(4) Provide an analysis of how the entities identified in question 3 will be impacted by either the implementation of this administrative regulation or amendment:
   (a) List the agencies and individuals involved:
   (b) The impact of the amendment:

- 689 -
tion. There is already a notice requirement and this amendment will not add to the cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. The students and staff of the entities will be better protected by this amendment.

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

(a) Initially: $0, as we already require an IFM program for schools. The

(b) On a continuing basis: $0, same as (5)(a).

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all affected entities will have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All institutions of teaching children including, but not limited to, preschools, kindergartens, child day care centers, primary and secondary schools will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B, 302 KAR 23.050.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no revenues and expenses will be negligible if any.

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

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

(c) How much will it cost to administer this program for the first year? Negligible

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

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

Revenues (+/-):
Expenditures (+/-):

Other Explanation: Schools are now required to provide advance notification. The current requirement is unwieldy and ambiguous. The proposed regulation will better streamline and define the regulatory requirements and will lessen the paperwork for schools.

STATEMENT OF EMERGENCY
501 KAR 6:240E

Nature of the emergency. The legislature expanded a provision for home incarceration to assist with overcrowding in jails and prisons and directed that administrative regulations be promulgated to establish home incarceration program procedures. These emergency regulations are necessary to meet an imminent threat to the public health, safety and welfare. The reasons an ordinary administrative regulation is not sufficient. An ordinary administrative regulation will delay the implementation of the home incarceration program and prevent the placement of a number of inmates on home incarceration. This will necessarily prevent the transfer of prisoners from jails to the spaces made available in the prisons from home incarceration placements. The Commonwealth will also reduce expenditures because of the earlier release and electronic monitoring of these prisoners. This administrative regulation shall be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The emergency and ordinary administrative regulations are identical.

ERNIE FLETCHER,
Governor

JOHN D. REES, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Emergency Amendment)

501 KAR 6:240E, Home Incarceration using an approved monitoring device.

RELATES TO: KRS Chapters 196, 197, 439, 532

EFFECTIVE: July 28, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, and 532.260 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations concerning the use of approved monitoring devices for inmate release to home incarceration and for the supervision of offenders on probation and parole. The administrative regulation incorporates by reference the policies and procedures governing the use of approved monitoring devices for inmate release to home incarceration and for the supervision of offenders on probation and parole.

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for home incarceration using an approved monitoring device, July 28, 2006 [June 1, 2006]" are incorporated by reference. These policies and procedures include:

25.12 Home Incarceration and Monitoring of Inmates
(Amended 7/28/06 [6/4/06])

27-15-02 Curfew and Monitoring (Amended 8/9/05)
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 275 E. Main Street, Frankfort, 40602-2400, (502) 564-4276 (606) 664-2024, facsimile (502) 564-5037 (606) 664-6461, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: July 10, 2006
FILED WITH LRC: July 28, 2006 at 4 p.m.
CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-6001 ext. 336 or 333, fax (502) 564-5229.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Dunn, (502) 564-2220

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference policies and procedures that govern operations of the Kentucky Department of Corrections and are used by department employees and inmates released early to home incarceration by the department to understand responsibilities.

(b) The necessity of this administrative regulation: The Department of Corrections is required to establish regulations concerning early release and electronic monitoring pursuant to KRS 532.260.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation revises policies and
procedures that govern the early release of inmates and electronic monitoring as required by KRS 532.260.
(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 the duties and responsibilities of their jobs and to inmates concerning responsibilities and requirements of early release.
(3) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment updates current practices and implements procedures to accomplish changes made by the Legislature to KRS 532.260.
(b) The necessity of the amendment to this administrative regulation: The amendment is needed to revise policies to comply with statutory changes.
(c) How the amendment conforms to the content of the authorizing statutes: The statutes permit the commissioner to promulgate regulations in order to implement and manage early release of inmates with electronic monitoring.
(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning changes in the eligibility requirements for electronic monitoring most of which pertain to changes in the statute.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect approximately 350 employees of 5000 inmates committed to the Department of Corrections and 70 jails.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in the question have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the requirements for electronic monitoring. Additional inmates are likely to be released because of changes made in the statute. The Department of Corrections retained 4 additional Classification and Treatment Officers to handle the eligibility reviews. Approximately 700 inmates are expected to be released approximately ten days early from jails and approximately 150 inmates from DOC and private prisons freeing additional bed space for new intakes.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs are based on the changes to the statute and most of the amendments to the regulation are directly related to the changes in the statute. It is expected to cost the DOC approximately $1,363,000 to implement the changes to the statute and the DOC expects to save $2,173,300. Each inmate released pays a monitoring fee and the amount will vary depending on the number of days early that the inmate is released. It is expected that the DOC will pay approximately $3,000,000 less to the jails because of fewer inmate days from early release.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional bedspace will be available in both jails and prisons helping to reduce overcrowding and allowing quicker intake of new inmates.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: $1,363,000
(b) On a continuing basis: $1,545,000
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds and savings in incarceration costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees will not be necessary. An increase in funding to implement this regulation will not be necessary due to the savings by the DOC from releasing inmates up to 90 days before their serve out date. By not having the inmates in a correctional facility the DOC does not have to pay for their incarceration.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The previous and current version required the inmates to pay the cost of monitoring. This cost to the inmate is not being increased.
(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Corrections, County Jails.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 532.260.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The program is designed to save the state revenue by releasing inmates up to 90 days early before their serve out date. The savings to the Department of Corrections is estimated to be $2,173,300 by not housing these inmates in a facility. In addition, the inmates may further reduce the cost of the program by paying the monitoring fee while they are on the program. It is expected that the DOC will pay approximately $3,000,000 less to the jails because of fewer inmate days from early release.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? $1,363,000
(c) How much will it cost to administer this program for the first year? $1,363,000
(d) How much will it cost to administer this program for subsequent years? $1,545,000 is the expected cost for the second year and personnel cost will increase each year with increments and other associated costs.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF EMERGENCY
703 KAR 5:020E

Kentucky's previous accountability plan for the federal No Child Left Behind Act (NCLB) included averaging data from two (2) or three (3) years preceding the current year to make Adequate Yearly Progress (AYP) determinations if the school or student sub-populations of sufficient size did not meet their goals for reading and mathematics using current year data for calculations. However, with implementation of the Augmented Norm Referenced Test (NRT) in the spring of 2006, there will only be one (1) year of data available in those grades. Without data from previous years for the augmented grades, Kentucky will invoke the flexibility offered by the "Wellstone Amendment" and continue to use the existing Kentucky Core Content Test (KCCT) grades to calculate AYP for accountability purposes. Therefore, AYP for 2006 will be calcu-
lated by averaging two (2) years of data from the existing KCCT grades in reading and mathematics for all schools and districts and subpopulations of sufficient size for the two (2) years combined. The U.S. Department of Education provided this approach, and there would be a risk of loss of federal funding if Kentucky does not comply with the state plan approved by the U.S. Department of Education. As a result, an emergency amendment is necessary. The emergency administrative regulation will be replaced by an ordinary administrative regulation, which is being filed simultaneously with the emergency administrative regulation. The emergency administrative regulation is identical to the ordinary administrative regulation.

ERNIE FLETCHER, Governor
GENE WILHOIT, Commissioner of Education
KEITH TRAVIS, Chairperson

EDUCATION CABINET
Board of Education
Department of Education
(Emergency Amendment)

703 KAR 5:020E. The formula for determining school accountability.

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

EFFECTIVE: August 2, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet or exceed their assistance line. This administrative regulation establishes a single assessment system with two accountability dimensions: one (1) addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

Section 1. Assessments. (1) The Kentucky Department of Education shall administer the Kentucky Core Content Tests and norm-referenced tests. The Kentucky Core Content Tests shall be administered as follows:

(a) Reading at grades 4, 7, and 10;
(b) Mathematics at grades 5, 8, and 11;
(c) Science at grades 4, 7, and 11;
(d) Social studies at grades 5, 8, and 11;
(e) Arts and humanities at grades 5, 8, and 11;
(f) Practical living/vocational studies at grades 5, 8, and 10;
(g) Writing at grades 4, 7, and 12;
(h) Writing portfolio at grades 4, 7, and 12; and
(i) Alternate portfolio at grades 4, 7, and 12.

(2) The norm-referenced tests shall be administered in reading/language arts and mathematics at the end of primary, grade 5, and grade 9.

(3) In order to comply with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., the Kentucky Department of Education shall augment the norm-referenced test to appropriately measure Kentucky's core content in reading and mathematics at grades three (3) and six (6). At grades five (5) and eight (8) an additional augmented norm-referenced test shall be administered in reading, and at grades four (4) and seven (7) an additional augmented norm-referenced test shall be administered in mathematics.

(4) Required participation in the National Assessment of Educational Progress. If a school 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 four (4) and eight (8), the school shall participate fully.

Section 2. Academic and Nonacademic Index Calculations. (1) For purposes of calculating a school's academic indices, the school shall be held accountable based on an aggregated average of the performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades. The points assigned to students scoring at each student achievement level and sublevel for purposes of computing the academic indices for a particular content area shall include:

(a) Nonperformance - if a total open-response raw score of less than one (1), and multiple-choice total raw score that is less than chance performance and the score converts to less than medium novice, it shall be assigned a score of zero. For the writing or alternate portfolio, a blank or incomplete response shall be assigned a score of zero;
(b) Medium novice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of thirteen (13);
(c) High novice (reading, mathematics, science, and social studies) shall be assigned a score of twenty-six (26);
(d) Low apprentice (reading, mathematics, science, and social studies) shall be assigned a score of forty (40);
(e) Medium apprentice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of sixty (60);
(f) High apprentice (reading, mathematics, science, and social studies) shall be assigned a score of eighty (80);
(g) Proficient in all content areas shall be assigned a score of 100, or distinguished in all content areas shall be assigned a score of 140.

(2) For all content areas except writing, the scores derived from the Kentucky Core Content Test shall be based on a scoring method that assigns sixty-seven (67) percent of the weight of the scores from open-response items and thirty-three (33) percent of the weight from multiple-choice items. The writing score shall be based on the writing prompt and the writing portfolio.

(3) The values for attendance rate and successful transition to adult life rate shall be the actual percentage reported. The values entered into formula calculations for retention rate and dropout rate shall be 100 minus the actual percentage calculated. Nonacademic data for a particular assessment year shall be calculated using the data from the previous school year. Nonacademic data shall be based on all grades within a school building generating appropriate data as follows:

(a) Attendance, primary through grade twelve (12);
(b) Retention rates, grades four (4) through twelve (12);
(c) Dropout rates, grades seven (7) through twelve (12); and
(d) Successful transition to adult life for the graduating student number.

(4) Scores from alternate portfolios shall be included in the academic indices so that the data from an alternate portfolio completed by a student eligible to participate with an alternate portfolio contributes the same weight to the academic component of the accountability index as would the data for a student participating in the regular components of the assessment program at the elementary, middle, or high school level. The same requirement shall be applied to calculations required by "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

Section 3. Components of the Accountability Index and Weights. (1) The accountability index shall consist of two (2) components. Component one (1) consists of academic indices and the nonacademic index. Component two (2) shall be an index created from a national norm-reference test (NRT). Component one (1) shall comprise ninety-five (95) percent of the total index. Component two (2) shall comprise five (5) percent of the index.

(2) The accountability index shall be rounded to the nearest tenth on the accountability scale.

(3) Computing the academic index for each of the content areas in reading, mathematics, science, social studies, arts and humanities, and practical living and vocational studies shall be based on the average of student scores as described in Section
2(1) of this administrative regulation. Component one (1) of the accountability index shall be calculated according to the following weights:

(a) Elementary school (grades end of primary - grade five 5)

<table>
<thead>
<tr>
<th>Content Area</th>
<th>Component One (Without NRT)</th>
<th>Component One and Two (With NRT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading</td>
<td>20%</td>
<td>19.00%</td>
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<tr>
<td>Mathematics</td>
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</tr>
<tr>
<td>Science</td>
<td>15%</td>
<td>14.25%</td>
</tr>
<tr>
<td>Social studies</td>
<td>15%</td>
<td>14.25%</td>
</tr>
<tr>
<td>Writing (15%)</td>
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<td></td>
</tr>
<tr>
<td>Writing Prompt</td>
<td>3%</td>
<td>2.65%</td>
</tr>
<tr>
<td>Writing Portfolio</td>
<td>12%</td>
<td>11.40%</td>
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<tr>
<td>Arts and Humanities</td>
<td>5%</td>
<td>4.75%</td>
</tr>
<tr>
<td>Practical Living and Vocational Studies</td>
<td>5%</td>
<td>4.75%</td>
</tr>
<tr>
<td>Nonacademic Index (5%)</td>
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</tr>
<tr>
<td>Attendance Rate</td>
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</tr>
<tr>
<td>Retention Rate</td>
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</tr>
<tr>
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</tr>
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<td></td>
<td>100%</td>
<td>100.00%</td>
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(b) Middle school (grades 6 - 8)

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<td>14.25%</td>
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<tr>
<td>Writing (15%)</td>
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<td></td>
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<tr>
<td>Writing On-Demand Prompt</td>
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<td>2.65%</td>
</tr>
<tr>
<td>Writing Portfolio</td>
<td>12%</td>
<td>11.40%</td>
</tr>
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<td>7.125%</td>
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<td>1.90%</td>
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(c) High school (grades 9 - 12)

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</tr>
</thead>
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<tr>
<td>Social studies</td>
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<td>14.25%</td>
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<tr>
<td>Writing (15%)</td>
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<td></td>
</tr>
<tr>
<td>Writing On-Demand Prompt</td>
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<td>2.65%</td>
</tr>
<tr>
<td>Writing Portfolio</td>
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<td>11.40%</td>
</tr>
<tr>
<td>Arts and Humanities</td>
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<td>7.125%</td>
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<tr>
<td>Practical Living and Vocational Studies</td>
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<td>7.125%</td>
</tr>
<tr>
<td>Nonacademic Index (10%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attendance Rate</td>
<td>2%</td>
<td>1.90%</td>
</tr>
<tr>
<td>Retention Rate</td>
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<td>0.49%</td>
</tr>
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<td>Dropout Rate</td>
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<td>Successful Transition to Adult Life</td>
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<td>3.56%</td>
</tr>
<tr>
<td>National-Norm-referenced Test</td>
<td>(Not Applicable)</td>
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</tr>
<tr>
<td></td>
<td>100%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

(4) The academic index for each content area and the nonacademic index shall be determined by summing the indices as described in this section.

(5) Component one (1) of the accountability index shall be calculated by aggregating the data from all of the students in the school.

(6) Component two (2) of the accountability index shall be derived from the national norm-referenced assessment as follows:

(a) Standard performance standards comparable to those used in component one (1) and described in Section 2 of this administrative regulation shall be established by the end of the year 2000.

(b) Scores shall be associated with each performance level as described in Section 2 of this administrative regulation;

(c) The component two (2) index shall be based on the average of the scores.

Section 4. Schools Not Conforming to the Standard Grade Configuration. (1) For the Kentucky Core Content Test, if a school does not have grades 4 and 5 at the elementary level, grades seven (7) and eight (8) at the middle school, or grades ten (10), eleven (11), and twelve (12) at the high school, the school shall be combined with the school or schools having the missing grade(s) its students previously attended or would subsequently attend, forming a single school accountability unit, for both state and federal school accountability purposes.

(2) A school that does not contain a grade at which the national norm-referenced test is administered shall have its accountability index calculated using only the weights specified as component one (1) of the index in Section 3 of this administrative regulation. Schools that have more than 1 grade at which the national norm-referenced test is administered shall have those grades combined to form the basis for component two (2) of the calculations described in Section 3 of this administrative regulation.

(3) A school or school district may request a waiver of the requirements of subsections (1) and (2) of this section or from the normal configuration of schools (elementary, middle, or high school) from the Kentucky Board of Education specifying other combinations of schools and assessment data if all students in an accountability grade are included, and all schools are accountable for all content areas assessed. A condition for the granting of a waiver shall be that each affected school and school district shall waive in writing its right to make the school configuration for which it sought a waiver the basis of a subsequent appeal of a school's classification. A waiver request shall be received by the Kentucky Department of Education by June 30 of the year prior to the bennium for which the waiver is requested.

Section 5. Schools Having More Than One (1) Accountability Level. If a school has more than one (1) accountability level, the school's accountability index shall be the average of the academic and nonacademic data for the school. This average accountability index shall be applied toward making adequate yearly progress decisions.

Section 6. School Service Area Reconfigurations. (1) If as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (0.8), the school shall be considered a reconfigured school.

(2) Schools reconfigured after the 1998-1999 school year shall be assigned a baseline calculated from the 1998-1999 and 1999-2000 aggregate district level data for the appropriate level (elementary, middle, or high school).

(3) A school district shall notify the Department of Education of any school that is planning for the upcoming school year to be a reconfigured school as provided in this administrative regulation by June 30 prior to the beginning of the school year in which the reconfiguration is to occur.

(a) For the purpose of assigning a school classification of
meets goal, progressing, or in need of assistance, a school that is considered a reconfigured school in either year of a biennium after 2000 on which accountability decisions are based shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school). If separate decisions (elementary, middle, or high school) were to be applied at the district level, in the alternative, a school district may submit to the Department of Education a plan for reconstituting baseline data taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in both baseline and growth index calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall not be implemented until the affected schools have a complete biennium of data to be considered in the growth calculations. A condition for acceptance of the plan shall be that each affected school and school district shall waive in writing its right to maintain the basis of a subsequent appeal of a school's classification.

(b) To determine whether a reconfigured school meets adequate yearly progress for the first three (3) years the school is reconfigured, the determination shall be made based on whether the school meets the annual measurable objectives established in reading and mathematics and has a participation rate for the school and its subpopulations of sufficient size identified in 20 U.S.C. 6301 et seq., of at least ninety-five (95) percent. Beginning with the fourth year of the school's reconfiguration, the school shall meet all requirements for making adequate yearly progress as provided in Section 10(2) of this administrative regulation.

(c) In the alternative to paragraph (b) of this subsection, a school district may submit to the Department of Education a plan for reconstituting baseline data necessary for a reconfigured school has met all requirements for meeting adequate yearly progress taken into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in annual calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall be implemented the year of the reconfiguration.

A school that has contained one (1) grade (elementary, middle, or high school) and is reconfigured by removing an entire level of the accountability grades may request that the portion of the school remaining stable be considered within the accountability system using its established historical data.

5 A school in transition because of a new building or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require the tracking of individual student data. This request shall require the approval of each affected school council, or the principal, if a school does not have a council, and the local board of education upon the recommendation of the superintendent.

Section 7. Accountability Procedures. (1) To establish expected levels of growth for each school, a straight line shall be drawn from a school's baseline minus one (1) standard error of measurement established in the 1998-1999 and 1999-2000 biennium to the state goal of a growth accountability index of 100 minus one (1) standard error of measurement by 2014.

(2) There shall be five (5) points of school recognition. These shall be determined from the baseline data (school years 1998-1999 and 1999-2000) so that at least ten (10) percent of the schools fall below the first point of recognition and the fifth recognition point shall be set at 100 on the accountability index scale, with the remaining points being established at equal whole number intervals between the high and the low.

Section 8. School Classifications Recognizing Growth. (1) To determine if a school is classified as meets goal, progressing, or in need of assistance, the school's growth accountability index for a biennium shall be compared to the corresponding goal point and assistance point.

(2) A school shall be classified as meets goal if the school's growth accountability index meets or exceeds its goal point and meets the dropout and novice reduction requirements of this section.

(3) To receive rewards under the provisions of this administrative regulation, a school shall have a biennial dropout rate less than or equal to five and three-tenths (5.3) percent, or a dropout rate that is at least one-half (1/2) of one (1) percent lower than its dropout rate of the previous biennium. A school shall not receive rewards if its dropout rate exceeds six (6) percent. If a school is reconfigured for a biennium, the school shall receive the aggregate district dropout rate for the biennium.

(4) To receive rewards under this administrative regulation, a school shall reduce the percent of novices on a schedule so that by the third biennium, the school shall have five (5) percent or less of its students scoring in the novice range of performance. The percent of novices shall be calculated to be reflective of the weights in Section 3 of this administrative regulation. The schedule shall be calculated by subtracting five (5) from the baseline percent novice and dividing this value by seven (7). The maximum allowable percent novice for each biennium shall be calculated as follows:

(a) Year 2002 = baseline percent novice minus the required novice reduction factor;

(b) Year 2004 = baseline percent novice minus the required novice reduction factor multiplied by two (2);

(c) Year 2006 = baseline percent novice minus the required novice reduction factor multiplied by three (3);

(d) Year 2008 = baseline percent novice minus the required novice reduction factor multiplied by four (4);

(e) Year 2010 = baseline percent novice minus the required novice reduction factor multiplied by five (5);

(f) Year 2012 = baseline percent novice minus the required novice reduction factor multiplied by six (6); and

(g) Year 2014 = baseline percent novice minus the required novice reduction factor multiplied by seven (7).

(5) A school shall be classified as a progressing school if the school's growth accountability index falls below its goal point and meets or exceeds its assistance point. A progressing school shall obtain an accountability index greater than that which it obtained in the previous biennium to earn a reward and other recognition as a progressing school.

(6) A school shall be classified as in need of assistance school if the school's growth accountability index falls below its assistance point. A school classified as being in need of assistance shall be eligible to apply for Commonwealth school improvement funds and may be subject to a scholastic audit.

(7) In 2002, the highest scoring five (5) percent of all schools shall be designated as Commonwealth pace-setter schools if they have met or exceeded the fourth point of recognition and if they meet the dropout rate and novice reduction requirements of this section. This calculation shall be based on the total accountability index of the school regardless of whether one (1), multiple, or no grades at which the norm-referenced test is administered are included. If not otherwise receiving rewards in recognition for growth, a Commonwealth pace-setter school shall receive one (1) share of rewards. In addition, to be classified as a pace-setter school beginning with the biennium ending in 2004, a school shall not have declined in both of the two (2) previous biennia. The rewards that may be due a school for having passed a higher point of recognition shall be given in addition to this amount.

Section 9. Reward Amounts. (1) There shall be two (2) levels of rewards for growth. A school classified as meets goal in accordance with Section 8(2) of this administrative regulation shall earn three (3) shares of rewards. A school classified as progressing in accordance with Section 8(5) of this administrative regulation shall
(2) A special one (1) time reward amount shall be distributed to schools as they meet or exceed school recognition points. These schools shall receive one (1) share of rewards and other forms of recognition as determined by the Kentucky Board of Education for meeting or exceeding each school recognition point.

(3) If a school passes two (2) or more of the school recognition points in one (1) biennium, the reward shall be cumulative. A school shall be awarded these amounts only one (1) time for meeting or passing each point. A school earning this reward and subsequently falling below a recognition point shall not earn the reward for passing the point again.

(4) A school shall earn a recognition point reward based on where its baseline falls and shall not receive rewards for meeting or exceeding school recognition points below its baseline index. The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed one and three-fourths (1 3/4) percent of the amount of funds paid to certified personnel within Kentucky's public schools during the last year of the accountability cycle. The total number of shares earned shall be divided into the amount determined pursuant to the subsection to determine the number of shares earned reward amount; however, a reward share shall not exceed $2000. A reward share shall be distributed to a school that meets the requirements for rewards as specified in Section 8 of this administrative regulation. The number of shares earned shall be multiplied by the total number of certified staff, as provided in KRS 158.6455 and subsection (6) of this section, to determine the final reward amount, as follows:

(a) One (1) share of certified full-time equivalent (FTE) staff times two (2) shares;
(b) Progressing: number of certified full-time equivalent (FTE) staff times one-half (1/2) share;
(c) Pass one (1) school recognition point: number of certified full-time equivalent (FTE) staff times one (1) share; and
(d) Pass one (1) school recognition point: number of certified full-time equivalent (FTE) staff times one (1) share.

(5) Beginning with rewards issued at the close of the 1998-2000 school year, a school shall earn rewards for use in the school based on the number of certified staff assigned to the school at the close of the biennium. A reward amount shall be determined based on the number of verified certified staff assigned to the school or combinations of schools earning the reward. A reward amount for part-time and itinerant staff shall be calculated based on the proportion of time spent in the school.

Section 10. School Accountability Requirements of the "No Child Left Behind Act of 2001". (1) For the purpose of determining whether a school 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, will establish a single starting point for each content area at each accountability level (elementary, middle, or high school) measuring the percentage of students meeting or exceeding the state's proficient level of academic achievement on the state assessments. The starting points for each accountability level shall be the percentage of students at or above the proficient level who are in the school at the 20th percentile in the state, based on enrollment, among all schools ranked by the percentage of students at or above the proficient level.

(2) For purposes of determining adequate yearly progress, a school shall be held accountable based on an aggregated average of the performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades and producing school level accountability statistics including:

(a) Percent proficient and above in reading and mathematics;
(b) School classification criteria as described in subsection (5)(b) of this section;
(c) Graduation rates; and,
(d) Participation rates.

(3) The percent proficient average shall be computed based on the most recent two (2) years of student performance data in reading and mathematics from the Kentucky Core Content Test (KYCCT) if a school 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 five (5) years of student performance data in reading and mathematics.

(4) These statistics shall be used to determine if a school has met adequate yearly progress as measured against the annual measurable objectives established in Section 10(11) of this administrative regulation.

(5) Meeting adequate yearly progress. Schools shall be determined to have made adequate yearly progress for a school year if:

(a) The school and all subpopulations of sufficient size identified in 20 U.S.C. 6301 et seq., met district annual measurable objectives in both reading and mathematics or met the conditions described as "safe harbor" in 703 KAR 5.001;
(b) The school had a school classification of any category of progressing or meets goal in the CATS biennial or midyear classification, whichever occurred more recently, at the elementary and middle school accountability 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 as defined in 703 KAR 5.001;
(c) The school demonstrated progress or met the annual goal for graduation rate as defined in 703 KAR 5.001; and
(d) The school 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 shall be computed as an average of the most recent two (2) years if the school had either a two (2) consecutive years in both reading and mathematics, it shall receive a reward or recognition from the Department of Education as determined on an annual basis.

(8) Before identifying a school as a no child left behind improvement school and implementing consequences required by 20 U.S.C. 6301 et seq., the local school district shall provide the school with an opportunity to review the school-level data on which the proposed identification is based. Not later than thirty (30) days after the district provides the school with the opportunity to review such school-level data, the district shall make public a final determination on the status of the school with respect to the identification.

(9) Confidence intervals. A school 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 school 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 school's percent of students proficient and above. The confidence interval shall also be based upon the same most recent two (2) years more than the current-year aggregated average of the elementary, middle, or high school students, the students used to compute an annual measurable objective, the confidence interval shall also be based upon the same most recent two (2) or three (3) years of student performance data upon which the aggregated average is based.

(10) Students included in participation rates. A student enrolled in a Kentucky public school on the first day of the testing window for the school shall be included in the calculation of the participation rates for the total population and for each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(11) Students included in determining whether a school meets annual measurable objectives. Beginning with data from the 2003-2004 school year, a student enrolled in a school for a full academic year shall be included in the school calculation of the percent of students performing at the proficient level or above in both reading and mathematics for purposes of federal accountability decisions.
(12) Annual Measurable Objectives in Reading and Mathematics - 2003 through 2014. The annual measurable objectives for reading and mathematics shall be as follows.

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<th>Middle Math</th>
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<th>High Math</th>
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Section 11. No Child Left Behind School Consequences. (1) Tier 1 consequences for no child left behind improvement schools. If a Title I school identified as a no child left behind (NCLB) improvement school, the local school district shall provide parental notification with explanations, required in 20 U.S.C. 6301 et seq., including information that all students enrolled in the school have the option to transfer, at the district's expense, to another public school operated and selected by the local school district that has not been identified as a school in improvement. The NCLB improvement school shall also write or revise its school plan.

(2) Tier 2 consequences for NCLB improvement schools. If a Title I school identified as a NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of one (1) full year after being identified as a NCLB improvement school, the local school district shall require that school to provide supplemental services as required by 20 U.S.C. 6301 et seq., and continue to provide services mandated in Section 11(1) of this administrative regulation.

(3) Tier 3 consequences for NCLB improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of two (2) full years after being identified, the local district shall take corrective action as required by 20 U.S.C. 6301 et seq., and continue to provide services required in Section 11(1) and (2) of this administrative regulation.

(4) Tier 4 consequences for NCLB no child left behind improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of three (3) full years after being identified, the local district shall plan for alternative school governance required by 20 U.S.C. 6301 et seq., and continue to provide services required in Section 11(1), (2), and (3) of this administrative regulation. If adequate yearly progress in both reading and mathematics is not made four (4) years after being identified as a NCLB improvement school, the alternative governance plan shall be implemented.

Section 12. Duration of Consequences. If a school identified as a NCLB improvement school makes adequate yearly progress in both reading and mathematics as defined in 703 KAR 5:001 for two (2) consecutive school years after the identification, the school shall no longer be identified as a NCLB improvement school and the school shall not be subject to federal consequences.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 158.070(4).

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chair
APPROVED BY AGENCY: July 12, 2006
FILED WITH LRC: August 2, 2006 at 4 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, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9231.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a single assessment system with 2 accountability dimensions: one addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq. (NCLB).
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific information for the state-wide assessment and accountability programs as required by KRS 158.6453, KRS 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., including types of assessments to be administered, grades and content areas to be assessed, weights of each assessment, and details of how schools will be held accountable.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the implementation of the state-wide assessment and accountability programs which will be applied in all schools as required by KRS 158.6453, KRS 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(2) if this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment provides specifics on how Kentucky will comply with the assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., and implements flexibility recently offered by the U.S. Department of Education.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to specify the requirements of schools in becoming compliant with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements of the assessment and accountability programs.

(d) How the amendment will assist in the effective administration of the statute: This amendment will provide to schools specifics for the implementation of the requirements of the statewide assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will impact at the state level how school scores are determined for math and reading, grades 3-8 under NCLB.

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky will not risk loss of federal funds for its public schools

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

(a) Initially: The proposed amendment does not result in additional costs.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal assessment funds under NCLB.

(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 NCLB federal funding as mentioned above is expected to cover the cost necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all public and elementary schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. "The No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expense to school districts.

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

(b) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost.

(c) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, August 8, 2005)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (20), 164.753(2), 34 C.F.R. 682.410(b)(9) [10], 20 U.S.C. 1071-1087-2, 1095a

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(2), 20 U.S.C. 1095(a)

NECESSITY, FUNCTION, AND CONFORMANCE: Pursuant to KRS 164.744(1) and 164.748(2), the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with 20 U.S.C. 1071 through 1087-2. 20 U.S.C. 1095a permits a student loan guarantee agency to garnish the disposable pay of a borrower to recover a loan guaranteed pursuant to 20 U.S.C. 1071 through 1087-2, notwithstanding a provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(10) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(20) authorizes authority to conduct administrative hearings, except from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes the procedures for implementing wage garnishment in accordance with requirements of the federal act.

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order shall conform to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of a student loan.

(3) An order for withholding of disposable pay shall not be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mail, addressed to the debtor at the residence or employment location last known to the authority. The notice shall include at least the following information:

(a) The name and address of the debtor;

(b) The amount of the debt determined by the authority to be due;

(c) Information sufficient to identify the basis for the debt;

(d) A statement of the intention of the authority to issue an order for withholding of disposable pay;

(e) A statement of the right to dispute the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;

(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by the authority for the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay shall be presumed; and

(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(4) An amount shall not be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) Establishment of a written repayment schedule in accordance with subsection (3)(g) of this section shall be deemed, for purposes of subsection (3)(e) of this section, conclusive acknowledgement by the debtor of the existence and amount of debt agreed to be paid.

(6) Service of the notice required by subsection (3) of this section shall be conclusively presumed to be effects five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice shall otherwise be evidenced by affidavit of a person executing personal service or a delivery receipt.

Section 2. (1)(a) A hearing shall be provided if the debtor, on or before the 15th day following the date of service of the notice required by Section 1(3) of this administrative regulation, files with the authority a written request for a hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board other than an administrative law judge), shall conduct the hearing.

(d) A hearing officer shall voluntarily disqualify himself and withdraw from a case in which he cannot afford a fair and impartial hearing or consideration.

1. A party shall request the disqualification of a hearing officer by filing timely a motion and affidavit, and a hearing officer shall only disqualify himself if he has knowledge of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include the following:

a. Participating in an ex parte communication which would prejudice the proceedings;

b. Having a pecuniary interest in the outcome of the proceeding;

or

c. Having a personal bias toward a party to a proceeding which would cause a prejudice on the outcome of the proceeding.

(e) A dispute hearing shall be conducted in Franklin County or another location agreed to by the parties.

(f) In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(g) Unless required for the disposition of an ex parte matter specifically authorized by this administrative regulation, a hearing officer shall not communicate off the record with a party to the hearing concerning a substantive issue, while the proceeding is pending.

(2)(a) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's
liability, if any, for repayment of the debt and the amount to be withheld from the debtor's disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer's decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor's disposable pay.

(c) A person, upon request, shall receive a copy of the official record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:

1. All notices, pleadings, motions, and intermediate rulings;
2. Any prehearing order;
3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Proofs of proof and objections and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;
7. A recording or transcript of the proceedings; and
8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3) (a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the review. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition of review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;
2. A statement specifying the part of the official record that the petitioner relies upon for reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and
3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer's decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:

1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and
2. a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;
b. Reject or modify, in whole or in part, the hearing officer's decision or
   c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:
   (i) In violation of constitutional or statutory provisions;
   (ii) In excess of the statutory authority of the agency;
   (iii) Without support of substantial evidence on the whole record;
   (iv) Arbitrary, capricious, or characterized by abuse of discretion; or
   (v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.
   (h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.

(4) The remedies provided in this section shall not:

a. Preclude the use of any other judicial or administrative remedies available to the authority under state or federal law, and
b. Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2) (a) Upon request of a party, the hearing officer may issue subpoena for the production of a document or attendance of a witness.

(b) Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:
   a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;
   b. Discuss the possibility of informal resolution of the dispute;
   c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and
   d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

3. a. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue not identified in the proposed stipulation of issues.

b. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in this subsection by Section 2(2) of this administrative regulation.

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for
a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.

(c) Facts recited in the authority's notice pursuant to Section 1(3) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(d) Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.

2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.

3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay, shall exist if there is:

1. Noncompliance with this subsection;
2. Failure of the authority to:
   a. Timely appoint a hearing officer; or
   b. Respond to a request for inspection of records; or
3. Failure of the debtor to submit information in accordance with paragraph (b) of this subsection.

3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the statements required by subsection (2)(b) and 2 of this section.

4. Solicit from the parties and dispose of any objections or motions;

5. Accept into evidence any documentary evidence not objected to;
6. Solicit opening statements; and
7. Proceed with the taking of proof.

(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.


(a) All testimony shall be made under oath or affirmation.

1. The hearing officer shall not admit evidence that is inadmissible, is a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the commonwealth.
2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.
3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.
4. A copy of a document shall be admissible if:
   a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or
   b. It is admitted without objection.
5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

(b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.

(c) The hearing officer:
1. May take official notice of:
   a. Statutes and administrative regulations;
   b. Facts which are not in dispute; and
   c. Generally-recognized technical or scientific facts;
2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and
3. Shall give each party an opportunity to contest facts officially noticed.

(d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(e) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

(f) Burden of proof.

(a) The authority shall have the burden to establish the existence and amount of the debt.

(b) The debtor shall have the burden to establish an affirmative defense.

(c) The party with the burden of proof on an issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontested facts or, if relevant facts are disputed, a preponderance of evidence in the record.

(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party review of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:

(a) Shall:
   1. Consider the matter; and
   2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency and
(b) May reverse the prior decision if the debtor presents evidence that:
   1. Circumstances have changed or new information is available; or
   2. The prior decision:
      a. Substantially disregarded or ignored the defense; or
      b. Was arbitrary, capricious, not supported by the facts as made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 626-402, except for reason of bankruptcy, has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;
(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or
(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(8), but the debtor did not previously seek discharge by the
by 125 percent, based on the debtor's family size:

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$12,250</td>
</tr>
<tr>
<td>2</td>
<td>$16,500</td>
</tr>
<tr>
<td>3</td>
<td>$20,750</td>
</tr>
<tr>
<td>4</td>
<td>$25,000</td>
</tr>
<tr>
<td>5</td>
<td>$29,250</td>
</tr>
<tr>
<td>6</td>
<td>$33,500</td>
</tr>
<tr>
<td>7</td>
<td>$37,750</td>
</tr>
<tr>
<td>8</td>
<td>$42,000</td>
</tr>
<tr>
<td>Each additional person</td>
<td>Add $4,250</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>[Size of family unit]</th>
<th>Poverty guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$11,270</td>
</tr>
<tr>
<td>2</td>
<td>$15,160</td>
</tr>
<tr>
<td>3</td>
<td>$19,050</td>
</tr>
<tr>
<td>4</td>
<td>$23,000</td>
</tr>
<tr>
<td>5</td>
<td>$26,910</td>
</tr>
<tr>
<td>6</td>
<td>$30,820</td>
</tr>
<tr>
<td>7</td>
<td>$34,730</td>
</tr>
<tr>
<td>8</td>
<td>$38,640</td>
</tr>
<tr>
<td>Each additional person</td>
<td>Add $3,910</td>
</tr>
</tbody>
</table>

2. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $59,999</th>
<th>$60,000 to $79,999</th>
<th>$80,000 to $99,999</th>
<th>$100,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1.061</td>
<td>1.069</td>
<td>1.539</td>
<td>2.593</td>
<td>2.599</td>
<td>3.660</td>
<td>4.891</td>
<td>6.421</td>
<td>12.458</td>
<td></td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2.756</td>
<td>2.925</td>
<td>3.333</td>
<td>3.887</td>
<td>3.526</td>
<td>3.416</td>
<td>2.673</td>
<td>2.660</td>
<td>1.867</td>
<td></td>
</tr>
<tr>
<td>Other lodging</td>
<td>75</td>
<td>101</td>
<td>72</td>
<td>103</td>
<td>180</td>
<td>210</td>
<td>245</td>
<td>548</td>
<td>1,310</td>
<td></td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1.103</td>
<td>1.454</td>
<td>1.833</td>
<td>2.223</td>
<td>2.438</td>
<td>2.735</td>
<td>2.962</td>
<td>3.326</td>
<td>4,257</td>
<td></td>
</tr>
<tr>
<td>Household services</td>
<td>188</td>
<td>231</td>
<td>788</td>
<td>336</td>
<td>574</td>
<td>385</td>
<td>441</td>
<td>544</td>
<td>1,650</td>
<td></td>
</tr>
<tr>
<td>--------------------</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>269</td>
<td>248</td>
<td>292</td>
<td>266</td>
<td>417</td>
<td>469</td>
<td>515</td>
<td>583</td>
<td>945</td>
<td></td>
</tr>
<tr>
<td>Household furnishing and equipment</td>
<td>768</td>
<td>337</td>
<td>437</td>
<td>551</td>
<td>859</td>
<td>1,068</td>
<td>1,261</td>
<td>1,568</td>
<td>3,108</td>
<td></td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>531</td>
<td>634</td>
<td>1,018</td>
<td>1,163</td>
<td>1,674</td>
<td>2,095</td>
<td>2,642</td>
<td>4,785</td>
<td>5,238</td>
<td></td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>403</td>
<td>381</td>
<td>464</td>
<td>626</td>
<td>846</td>
<td>1,072</td>
<td>1,305</td>
<td>1,656</td>
<td>2,011</td>
<td></td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>207</td>
<td>193</td>
<td>192</td>
<td>310</td>
<td>393</td>
<td>403</td>
<td>495</td>
<td>746</td>
<td>1,001</td>
<td></td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>224</td>
<td>234</td>
<td>343</td>
<td>521</td>
<td>553</td>
<td>756</td>
<td>1,012</td>
<td>1,184</td>
<td>1,578</td>
<td></td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>132</td>
<td>101</td>
<td>110</td>
<td>235</td>
<td>200</td>
<td>238</td>
<td>452</td>
<td>578</td>
<td>1,195</td>
<td></td>
</tr>
<tr>
<td>Public transportation</td>
<td>259</td>
<td>228</td>
<td>243</td>
<td>234</td>
<td>425</td>
<td>398</td>
<td>410</td>
<td>597</td>
<td>1,149</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(Debtor’s–Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $20,000</th>
<th>$20,000 to $30,000</th>
<th>$30,000 to $40,000</th>
<th>$40,000 to $60,000</th>
<th>$60,000 to $70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned-dwelling</td>
<td>1,124</td>
<td>1,105</td>
<td>1,604</td>
<td>2,613</td>
<td>2,679</td>
<td>3,489</td>
<td>4,994</td>
<td>6,318</td>
</tr>
<tr>
<td>Rented-dwelling</td>
<td>2,686</td>
<td>2,676</td>
<td>3,491</td>
<td>3,762</td>
<td>4,104</td>
<td>4,378</td>
<td>2,837</td>
<td>2,522</td>
</tr>
<tr>
<td>Other lodging</td>
<td>456</td>
<td>363</td>
<td>150</td>
<td>190</td>
<td>268</td>
<td>408</td>
<td>606</td>
<td>4,360</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,161</td>
<td>1,142</td>
<td>1,868</td>
<td>2,194</td>
<td>2,383</td>
<td>2,729</td>
<td>2,804</td>
<td>3,204</td>
</tr>
<tr>
<td>Household services</td>
<td>50</td>
<td>188</td>
<td>538</td>
<td>257</td>
<td>484</td>
<td>418</td>
<td>676</td>
<td>660</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>266</td>
<td>263</td>
<td>346</td>
<td>456</td>
<td>466</td>
<td>489</td>
<td>643</td>
<td>658</td>
</tr>
<tr>
<td>Household furnishing and equipment</td>
<td>656</td>
<td>604</td>
<td>677</td>
<td>660</td>
<td>874</td>
<td>4,290</td>
<td>4,424</td>
<td>1,606</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>322</td>
<td>689</td>
<td>1,322</td>
<td>836</td>
<td>1,610</td>
<td>2,398</td>
<td>3,757</td>
<td>4,888</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>374</td>
<td>220</td>
<td>463</td>
<td>604</td>
<td>774</td>
<td>0,402</td>
<td>4,170</td>
<td>4,292</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>470</td>
<td>234</td>
<td>262</td>
<td>386</td>
<td>440</td>
<td>546</td>
<td>611</td>
<td>762</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>296</td>
<td>270</td>
<td>426</td>
<td>626</td>
<td>647</td>
<td>756</td>
<td>1,006</td>
<td>1,189</td>
</tr>
<tr>
<td>Vehicle lease, lease, and other charges</td>
<td>489</td>
<td>104</td>
<td>192</td>
<td>238</td>
<td>249</td>
<td>372</td>
<td>687</td>
<td>789</td>
</tr>
<tr>
<td>Public transportation</td>
<td>284</td>
<td>304</td>
<td>286</td>
<td>204</td>
<td>483</td>
<td>432</td>
<td>633</td>
<td>663</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Category</th>
<th>New York</th>
<th>Philadelphia</th>
<th>Boston</th>
<th>Pittsburgh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwellings</td>
<td>8,148</td>
<td>5,240</td>
<td>6,882</td>
<td>4,314</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>4,190</td>
<td>2,248</td>
<td>3,198</td>
<td>1,573</td>
</tr>
<tr>
<td>Other lodging</td>
<td>710</td>
<td>526</td>
<td>477</td>
<td>435</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,248</td>
<td>3,312</td>
<td>2,822</td>
<td>2,964</td>
</tr>
<tr>
<td>Household services</td>
<td>1,067</td>
<td>674</td>
<td>903</td>
<td>559</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>547</td>
<td>535</td>
<td>633</td>
<td>528</td>
</tr>
<tr>
<td>Household furnishing and equipment</td>
<td>1,759</td>
<td>1,664</td>
<td>1,403</td>
<td>1,649</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>2,672</td>
<td>3,623</td>
<td>3,443</td>
<td>2,483</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,196</td>
<td>1,234</td>
<td>1,299</td>
<td>1,286</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,722</td>
<td>2,347</td>
<td>2,128</td>
<td>2,360</td>
</tr>
<tr>
<td>Public transportation</td>
<td>1,007</td>
<td>465</td>
<td>529</td>
<td>379</td>
</tr>
</tbody>
</table>

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## VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

<table>
<thead>
<tr>
<th>Other-vehicle expenses (repairs, insurance, lease, licenCC, and other charges)</th>
<th>2,658</th>
<th>2,606</th>
<th>2,674</th>
<th>2,639</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public transportation</td>
<td>4,043</td>
<td>374</td>
<td>424</td>
<td>369</td>
</tr>
</tbody>
</table>

3.a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $20,000</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $69,999 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1,739</td>
<td>941</td>
<td>1,660</td>
<td>2,578</td>
<td>2,460</td>
<td>3,335</td>
<td>4,355</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>2,168</td>
<td>2,383</td>
<td>2,305</td>
<td>2,258</td>
<td>2,414</td>
<td>2,043</td>
<td>1,752</td>
</tr>
<tr>
<td>Other lodging</td>
<td>226</td>
<td>154</td>
<td>112</td>
<td>126</td>
<td>188</td>
<td>211</td>
<td>296</td>
</tr>
<tr>
<td>Utilities, fuels and public services</td>
<td>1,448</td>
<td>1,527</td>
<td>2,040</td>
<td>2,240</td>
<td>2,407</td>
<td>2,701</td>
<td>2,905</td>
</tr>
<tr>
<td>Household operations services</td>
<td>237</td>
<td>127</td>
<td>275</td>
<td>277</td>
<td>358</td>
<td>402</td>
<td>443</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>189</td>
<td>236</td>
<td>383</td>
<td>425</td>
<td>557</td>
<td>583</td>
<td>747</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>384</td>
<td>361</td>
<td>411</td>
<td>550</td>
<td>904</td>
<td>1,205</td>
<td>1,383</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,561</td>
<td>933</td>
<td>1,155</td>
<td>1,194</td>
<td>2,420</td>
<td>2,612</td>
<td>3,218</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>710</td>
<td>600</td>
<td>709</td>
<td>948</td>
<td>1,065</td>
<td>1,371</td>
<td>1,563</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>190</td>
<td>222</td>
<td>322</td>
<td>345</td>
<td>423</td>
<td>600</td>
<td>548</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>226</td>
<td>248</td>
<td>454</td>
<td>536</td>
<td>670</td>
<td>789</td>
<td>946</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>170</td>
<td>128</td>
<td>125</td>
<td>181</td>
<td>255</td>
<td>381</td>
<td>275</td>
</tr>
<tr>
<td>Public transportation</td>
<td>247</td>
<td>135</td>
<td>109</td>
<td>147</td>
<td>194</td>
<td>165</td>
<td>245</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Chicago</th>
<th>Detroit</th>
<th>Milwaukee</th>
<th>Minneapolis</th>
<th>St. Paul</th>
<th>Cleveland</th>
<th>Cincinnati</th>
<th>St. Louis</th>
<th>Kansas City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td>7,840</td>
<td>6,588</td>
<td>6,228</td>
<td>7,552</td>
<td>5,271</td>
<td>4,654</td>
<td>5,621</td>
<td>5,235</td>
</tr>
<tr>
<td>Owned dwelling</td>
<td>2,225</td>
<td>1,692</td>
<td>2,267</td>
<td>2,188</td>
<td>1,581</td>
<td>2,877</td>
<td>1,652</td>
<td>2,001</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>672</td>
<td>720</td>
<td>477</td>
<td>957</td>
<td>385</td>
<td>515</td>
<td>631</td>
<td>388</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,583</td>
<td>3,370</td>
<td>2,790</td>
<td>2,928</td>
<td>2,387</td>
<td>2,685</td>
<td>3,178</td>
<td>3,419</td>
</tr>
<tr>
<td>Household services</td>
<td>1,068</td>
<td>823</td>
<td>497</td>
<td>950</td>
<td>384</td>
<td>563</td>
<td>937</td>
<td>713</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>781</td>
<td>552</td>
<td>664</td>
<td>748</td>
<td>460</td>
<td>513</td>
<td>485</td>
<td>853</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,198</td>
<td>1,635</td>
<td>1,532</td>
<td>2,960</td>
<td>1,248</td>
<td>1,766</td>
<td>1,826</td>
<td>2,519</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>3,618</td>
<td>3,473</td>
<td>3,251</td>
<td>3,878</td>
<td>2,744</td>
<td>3,317</td>
<td>4,237</td>
<td>3,996</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,449</td>
<td>1,639</td>
<td>1,444</td>
<td>1,610</td>
<td>1,244</td>
<td>1,400</td>
<td>1,450</td>
<td>1,682</td>
</tr>
<tr>
<td>Vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,445</td>
<td>3,403</td>
<td>2,028</td>
<td>2,972</td>
<td>2,515</td>
<td>2,242</td>
<td>2,391</td>
<td>2,599</td>
</tr>
<tr>
<td>Public transportation</td>
<td>667</td>
<td>460</td>
<td>412</td>
<td>742</td>
<td>250</td>
<td>302</td>
<td>400</td>
<td>234</td>
</tr>
</tbody>
</table>

- 703 -
### VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

<table>
<thead>
<tr>
<th></th>
<th>St.-Paul</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual Expenditures</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned dwelling</td>
<td>7,333</td>
<td>6,649</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,344</td>
<td>1,737</td>
</tr>
<tr>
<td>Other lodging</td>
<td>610</td>
<td>603</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>2,190</td>
<td>2,011</td>
</tr>
<tr>
<td>Household services</td>
<td>876</td>
<td>792</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>624</td>
<td>530</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,080</td>
<td>1,442</td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>3,670</td>
<td>2,956</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,326</td>
<td>1,335</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, license, and other charges)</td>
<td>2,410</td>
<td>2,229</td>
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</tbody>
</table>

| Public transportation | 657 | 486 |

b. If the debtor resides in the following metropolitan areas, actual annual expenditures by the debtor’s family shall exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary:

#### Debtor’s Available Resources

<table>
<thead>
<tr>
<th></th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1,311</td>
<td>1,202</td>
<td>1,294</td>
<td>1,715</td>
<td>2,422</td>
<td>3,216</td>
<td>4,123</td>
<td>5,158</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>1,692</td>
<td>1,639</td>
<td>1,681</td>
<td>2,122</td>
<td>2,859</td>
<td>3,884</td>
<td>5,042</td>
<td>6,122</td>
</tr>
<tr>
<td>Other lodging</td>
<td>74</td>
<td>53</td>
<td>74</td>
<td>93</td>
<td>112</td>
<td>137</td>
<td>176</td>
<td>222</td>
</tr>
<tr>
<td>Utilities, fuels, and other charges</td>
<td>1,544</td>
<td>1,723</td>
<td>2,174</td>
<td>2,282</td>
<td>2,558</td>
<td>2,735</td>
<td>3,092</td>
<td>3,315</td>
</tr>
<tr>
<td>Household services</td>
<td>135</td>
<td>131</td>
<td>246</td>
<td>423</td>
<td>408</td>
<td>451</td>
<td>554</td>
<td>754</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>310</td>
<td>252</td>
<td>286</td>
<td>372</td>
<td>286</td>
<td>466</td>
<td>486</td>
<td>565</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
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<td>389</td>
<td>496</td>
<td>653</td>
<td>823</td>
<td>1,011</td>
<td>1,320</td>
<td>1,416</td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>614</td>
<td>627</td>
<td>1,437</td>
<td>1,618</td>
<td>2,452</td>
<td>3,198</td>
<td>3,990</td>
<td>5,206</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>746</td>
<td>613</td>
<td>790</td>
<td>1,022</td>
<td>1,219</td>
<td>1,441</td>
<td>1,591</td>
<td>1,828</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>235</td>
<td>217</td>
<td>249</td>
<td>544</td>
<td>421</td>
<td>485</td>
<td>598</td>
<td>674</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>289</td>
<td>280</td>
<td>481</td>
<td>620</td>
<td>770</td>
<td>948</td>
<td>1,019</td>
<td>1,153</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>113</td>
<td>83</td>
<td>72</td>
<td>108</td>
<td>194</td>
<td>227</td>
<td>248</td>
<td>358</td>
</tr>
<tr>
<td>Public transportation</td>
<td>95</td>
<td>63</td>
<td>67</td>
<td>112</td>
<td>125</td>
<td>151</td>
<td>183</td>
<td>250</td>
</tr>
</tbody>
</table>

#### [Debtor’s Available Resources](#)

<table>
<thead>
<tr>
<th></th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1,355</td>
<td>1,344</td>
<td>1,344</td>
<td>1,841</td>
<td>2,423</td>
<td>3,403</td>
<td>4,485</td>
<td>5,423</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,008</td>
<td>2,783</td>
<td>4,846</td>
<td>2,079</td>
<td>2,309</td>
<td>2,637</td>
<td>3,940</td>
<td>4,164</td>
</tr>
<tr>
<td>Other lodging</td>
<td>166</td>
<td>94</td>
<td>94</td>
<td>199</td>
<td>257</td>
<td>286</td>
<td>298</td>
<td>271</td>
</tr>
<tr>
<td>Utilities, fuels, and other charges</td>
<td>1,619</td>
<td>1,850</td>
<td>2,693</td>
<td>2,264</td>
<td>2,621</td>
<td>2,660</td>
<td>3,030</td>
<td>3,203</td>
</tr>
<tr>
<td>Household services</td>
<td>129</td>
<td>203</td>
<td>241</td>
<td>452</td>
<td>472</td>
<td>626</td>
<td>743</td>
<td>806</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>347</td>
<td>232</td>
<td>251</td>
<td>378</td>
<td>350</td>
<td>484</td>
<td>460</td>
<td>676</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>567</td>
<td>468</td>
<td>466</td>
<td>613</td>
<td>828</td>
<td>4,002</td>
<td>4,914</td>
<td>4,661</td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>973</td>
<td>859</td>
<td>1,725</td>
<td>2,650</td>
<td>2,741</td>
<td>3,482</td>
<td>3,749</td>
<td>5,582</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>687</td>
<td>677</td>
<td>806</td>
<td>906</td>
<td>1,102</td>
<td>1,316</td>
<td>1,456</td>
<td>1,680</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>314</td>
<td>240</td>
<td>296</td>
<td>397</td>
<td>622</td>
<td>663</td>
<td>709</td>
<td>767</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>240</td>
<td>319</td>
<td>451</td>
<td>662</td>
<td>768</td>
<td>914</td>
<td>1,017</td>
<td>1,175</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>127</td>
<td>82</td>
<td>106</td>
<td>118</td>
<td>170</td>
<td>216</td>
<td>333</td>
<td>484</td>
</tr>
<tr>
<td>Public transportation</td>
<td>126</td>
<td>89</td>
<td>97</td>
<td>128</td>
<td>141</td>
<td>163</td>
<td>206</td>
<td>308</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th></th>
<th>Washington D.C.</th>
<th>Baltimore</th>
<th>Atlanta</th>
<th>Miami</th>
<th>Tampa</th>
<th>Dallas / Forth Worth</th>
<th>Houston</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>8,641</td>
<td>6,102</td>
<td>6,383</td>
<td>6,685</td>
<td>5,561</td>
<td>6,065</td>
<td>5,417</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,958</td>
<td>2,036</td>
<td>2,024</td>
<td>3,155</td>
<td>1,889</td>
<td>2,528</td>
<td>2,719</td>
</tr>
<tr>
<td>Other lodging</td>
<td>598</td>
<td>510</td>
<td>376</td>
<td>321</td>
<td>350</td>
<td>616</td>
<td>379</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,067</td>
<td>2,767</td>
<td>3,421</td>
<td>3,068</td>
<td>3,021</td>
<td>3,538</td>
<td>3,284</td>
</tr>
<tr>
<td>Household services</td>
<td>832</td>
<td>599</td>
<td>699</td>
<td>991</td>
<td>648</td>
<td>734</td>
<td>1,030</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-------</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>648</td>
<td>588</td>
<td>401</td>
<td>524</td>
<td>398</td>
<td>553</td>
<td>585</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,028</td>
<td>1,199</td>
<td>1,243</td>
<td>1,434</td>
<td>1,288</td>
<td>1,627</td>
<td>1,707</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>3,374</td>
<td>1,652</td>
<td>3,610</td>
<td>3,709</td>
<td>3,546</td>
<td>4,393</td>
<td>5,243</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,318</td>
<td>1,139</td>
<td>1,222</td>
<td>1,324</td>
<td>1,142</td>
<td>1,510</td>
<td>1,457</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,454</td>
<td>2,215</td>
<td>2,268</td>
<td>2,868</td>
<td>2,407</td>
<td>3,016</td>
<td>2,794</td>
</tr>
<tr>
<td>Public transportation</td>
<td>707</td>
<td>400</td>
<td>263</td>
<td>447</td>
<td>196</td>
<td>348</td>
<td>386</td>
</tr>
</tbody>
</table>

5.a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area listed in clause b of this paragraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>To $9,999</th>
<th>To $14,999</th>
<th>To $19,999</th>
<th>To $29,999</th>
<th>To $49,999</th>
<th>To $69,999</th>
<th>To $70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned dwelling</td>
<td>2,073</td>
<td>1,035</td>
<td>1,920</td>
<td>1,908</td>
<td>3,011</td>
<td>3,363</td>
<td>4,724</td>
<td>7,016</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,507</td>
<td>2,704</td>
<td>3,292</td>
<td>3,735</td>
<td>3,747</td>
<td>3,671</td>
<td>3,650</td>
<td>2,753</td>
</tr>
<tr>
<td>Other lodging</td>
<td>426</td>
<td>288</td>
<td>238</td>
<td>209</td>
<td>221</td>
<td>253</td>
<td>307</td>
<td>476</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,411</td>
<td>1,264</td>
<td>1,585</td>
<td>1,773</td>
<td>2,085</td>
<td>2,377</td>
<td>2,669</td>
<td>2,988</td>
</tr>
<tr>
<td>Household services</td>
<td>262</td>
<td>161</td>
<td>376</td>
<td>300</td>
<td>435</td>
<td>521</td>
<td>613</td>
<td>789</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>308</td>
<td>208</td>
<td>392</td>
<td>460</td>
<td>409</td>
<td>525</td>
<td>515</td>
<td>620</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>617</td>
<td>452</td>
<td>880</td>
<td>942</td>
<td>1,059</td>
<td>1,392</td>
<td>1,613</td>
<td>2,135</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,477</td>
<td>1,220</td>
<td>1,418</td>
<td>1,461</td>
<td>2,683</td>
<td>3,215</td>
<td>3,413</td>
<td>5,214</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>730</td>
<td>615</td>
<td>812</td>
<td>1,000</td>
<td>1,200</td>
<td>1,497</td>
<td>1,712</td>
<td>1,978</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>352</td>
<td>287</td>
<td>312</td>
<td>592</td>
<td>573</td>
<td>737</td>
<td>810</td>
<td>954</td>
</tr>
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<td>Vehicle insurance</td>
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<td>319</td>
<td>412</td>
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<td>725</td>
<td>944</td>
<td>1,051</td>
<td>1,191</td>
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<tr>
<td>Vehicle lease, license, and other charges</td>
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<td>69</td>
<td>178</td>
<td>171</td>
<td>273</td>
<td>316</td>
<td>412</td>
<td>553</td>
</tr>
<tr>
<td>Public transportation</td>
<td>190</td>
<td>128</td>
<td>183</td>
<td>253</td>
<td>353</td>
<td>394</td>
<td>383</td>
<td>558</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Los Angeles</th>
<th>San Francisco</th>
<th>San Diego</th>
<th>Portland</th>
<th>Seattle</th>
<th>Honolulu</th>
<th>Anchorage</th>
<th>Phoenix</th>
<th>Denver</th>
</tr>
</thead>
<tbody>
<tr>
<td>7,378</td>
<td>7,000</td>
<td>7,575</td>
<td>6,038</td>
<td>7,011</td>
<td>6,299</td>
<td>7,329</td>
<td>5,743</td>
<td>6,314</td>
</tr>
<tr>
<td>4,144</td>
<td>4,552</td>
<td>4,690</td>
<td>2,597</td>
<td>2,638</td>
<td>4,160</td>
<td>2,977</td>
<td>2,265</td>
<td>3,001</td>
</tr>
<tr>
<td>592</td>
<td>746</td>
<td>777</td>
<td>728</td>
<td>732</td>
<td>535</td>
<td>505</td>
<td>396</td>
<td>475</td>
</tr>
<tr>
<td>2,713</td>
<td>2,670</td>
<td>2,633</td>
<td>2,794</td>
<td>2,631</td>
<td>2,656</td>
<td>2,824</td>
<td>2,851</td>
<td>2,878</td>
</tr>
<tr>
<td>1,124</td>
<td>1,321</td>
<td>1,100</td>
<td>919</td>
<td>769</td>
<td>770</td>
<td>868</td>
<td>983</td>
<td>836</td>
</tr>
<tr>
<td>652</td>
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<td>723</td>
<td>573</td>
<td>681</td>
<td>583</td>
<td>740</td>
<td>474</td>
<td>587</td>
</tr>
<tr>
<td>2,172</td>
<td>1,912</td>
<td>1,868</td>
<td>2,012</td>
<td>2,249</td>
<td>1,582</td>
<td>2,196</td>
<td>1,843</td>
<td>1,670</td>
</tr>
<tr>
<td>4,096</td>
<td>3,441</td>
<td>4,532</td>
<td>2,845</td>
<td>4,204</td>
<td>4,356</td>
<td>5,129</td>
<td>5,612</td>
<td>3,583</td>
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</table>
### VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

<table>
<thead>
<tr>
<th>Gasoline and motor oil</th>
<th>1.938</th>
<th>1.590</th>
<th>1.733</th>
<th>1.433</th>
<th>1.528</th>
<th>1.277</th>
<th>1.822</th>
<th>1.455</th>
<th>1.447</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other vehicle expenses (repairs, insurance, license, and other charges)</td>
<td>3.116</td>
<td>3.018</td>
<td>2.531</td>
<td>2.537</td>
<td>2.806</td>
<td>2.218</td>
<td>2.897</td>
<td>3.093</td>
<td>2.963</td>
</tr>
<tr>
<td>Public transportation</td>
<td>583</td>
<td>830</td>
<td>775</td>
<td>461</td>
<td>807</td>
<td>927</td>
<td>845</td>
<td>363</td>
<td>617</td>
</tr>
</tbody>
</table>

### [Lee-Angeles, San-Francisco, San Diego, Portland, Seattle, Honolulu, Anchorage, Phoenix, Denver]

| Rented-dwelling | 4.068 | 4.650 | 4.520 | 2.702 | 2.646 | 5.273 | 3.946 | 2.914 | 3.928 |
| Other lodging | 544 | 649 | 627 | 663 | 624 | 528 | 663 | 470 | 408 |
| Utility, fuel, and public services | 2.668 | 2.666 | 2.608 | 2.778 | 2.682 | 2.493 | 2.703 | 2.723 | 2.690 |
| Household services | 947 | 3.208 | 930 | 808 | 274 | 707 | 806 | 821 | 955 |
| Housekeeping and miscellaneous supplies | 885 | 814 | 852 | 463 | 642 | 489 | 665 | 489 | 638 |
| Household furnishings and equipment | 2.035 | 4.610 | 2.123 | 2.003 | 1.796 | 1.410 | 3.333 | 2.024 | 2.060 |
| Gasoline and motor oil | 1.560 | 1.455 | 1.543 | 1.253 | 1.342 | 1.442 | 1.450 | 1.366 | 1.332 |
| Other vehicle expenses (repairs, insurance, license, and other charges) | 3.070 | 2.670 | 2.199 | 2.639 | 2.844 | 2.968 | 2.043 | 2.617 | 2.484 |
| Public transportation | 493 | 704 | 430 | 467 | 568 | 948 | 784 | 430 | 640 |

6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $79,999</th>
<th>$80,000 to $100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>2,143</td>
<td>1,983</td>
<td>2,356</td>
<td>2,688</td>
<td>2,975</td>
<td>3,385</td>
<td>3,858</td>
<td>4,333</td>
</tr>
<tr>
<td>Apparel</td>
<td>546</td>
<td>542</td>
<td>507</td>
<td>576</td>
<td>716</td>
<td>797</td>
<td>1,026</td>
<td>1,216</td>
</tr>
<tr>
<td>Health insurance</td>
<td>312</td>
<td>607</td>
<td>1,069</td>
<td>660</td>
<td>278</td>
<td>860</td>
<td>860</td>
<td>860</td>
</tr>
<tr>
<td>Medical services</td>
<td>213</td>
<td>163</td>
<td>258</td>
<td>327</td>
<td>417</td>
<td>492</td>
<td>437</td>
<td>503</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>162</td>
<td>323</td>
<td>538</td>
<td>469</td>
<td>431</td>
<td>332</td>
<td>324</td>
<td>319</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>35</td>
<td>54</td>
<td>60</td>
<td>72</td>
<td>60</td>
<td>102</td>
<td>76</td>
<td>83</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>205</td>
<td>188</td>
<td>276</td>
<td>314</td>
<td>367</td>
<td>377</td>
<td>468</td>
<td>525</td>
</tr>
<tr>
<td>Education</td>
<td>1,343</td>
<td>713</td>
<td>491</td>
<td>470</td>
<td>267</td>
<td>252</td>
<td>341</td>
<td>454</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>47</td>
<td>68</td>
<td>115</td>
<td>153</td>
<td>136</td>
<td>173</td>
<td>219</td>
<td>264</td>
</tr>
</tbody>
</table>

### [Debtor's Available Resources]

| Food                         | 2,141 | 2,448 | 2,428 | 2,678 | 2,696 | 3,233 | 2,589 | 3,464 | 6,927 |
| Apparel                      | 733 | 688 | 685 | 781 | 883 | 1,073 | 1,255 | 1,524 | 2,566 |
| Health insurance             | 328 | 309 | 286 | 347 | 270 | 720 | 752 | 974 |
| Medical services             | 156 | 346 | 330 | 315 | 335 | 470 | 498 | 428 | 1,128 |
| Prescription drugs           | 182 | 333 | 356 | 361 | 346 | 319 | 249 | 220 |
| Medical supplies             | 42 | 99 | 76 | 64 | 87 | 66 | 84 | 94 |
| Personal care products and services | 207 | 266 | 314 | 369 | 320 | 361 | 499 | 648 |
| Education                    | 1,444 | 656 | 360 | 454 | 275 | 374 | 475 | 464 |
| Life and other personal insurance | 44 | 196 | 166 | 183 | 324 | 252 | 223 | 236 | 617 |

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $79,999</th>
<th>$80,000 to $100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>4,192</td>
<td>3,101</td>
<td>3,539</td>
<td>3,728</td>
<td>4,273</td>
<td>4,842</td>
<td>5,345</td>
<td>5,959</td>
</tr>
<tr>
<td>Apparel</td>
<td>1,098</td>
<td>861</td>
<td>1,061</td>
<td>846</td>
<td>852</td>
<td>1,144</td>
<td>1,466</td>
<td>1,485</td>
</tr>
<tr>
<td>Health insurance</td>
<td>814</td>
<td>987</td>
<td>1,137</td>
<td>1,619</td>
<td>1,745</td>
<td>1,702</td>
<td>1,802</td>
<td>1,665</td>
</tr>
<tr>
<td>Medical services</td>
<td>297</td>
<td>272</td>
<td>405</td>
<td>401</td>
<td>582</td>
<td>782</td>
<td>690</td>
<td>761</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>490</td>
<td>391</td>
<td>426</td>
<td>757</td>
<td>757</td>
<td>782</td>
<td>702</td>
<td>645</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>79</td>
<td>67</td>
<td>80</td>
<td>117</td>
<td>139</td>
<td>148</td>
<td>124</td>
<td>162</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>257</td>
<td>247</td>
<td>208</td>
<td>322</td>
<td>428</td>
<td>466</td>
<td>571</td>
<td>651</td>
</tr>
</tbody>
</table>

- 706 -
<table>
<thead>
<tr>
<th>Education</th>
</tr>
</thead>
<tbody>
<tr>
<td>333</td>
</tr>
<tr>
<td>388</td>
</tr>
<tr>
<td>451</td>
</tr>
<tr>
<td>217</td>
</tr>
<tr>
<td>282</td>
</tr>
<tr>
<td>280</td>
</tr>
<tr>
<td>413</td>
</tr>
<tr>
<td>619</td>
</tr>
<tr>
<td>1,488</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Life and other personal insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>176</td>
</tr>
<tr>
<td>177</td>
</tr>
<tr>
<td>214</td>
</tr>
<tr>
<td>354</td>
</tr>
<tr>
<td>290</td>
</tr>
<tr>
<td>387</td>
</tr>
<tr>
<td>420</td>
</tr>
<tr>
<td>523</td>
</tr>
<tr>
<td>859</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $5,000 to $9,999</td>
</tr>
<tr>
<td>$6,000 to $10,000 to $15,000 to $20,000 to $25,000 to $30,000 to $40,000 to $50,000 to $70,000 and over</td>
</tr>
<tr>
<td>Food</td>
</tr>
<tr>
<td>2,936</td>
</tr>
<tr>
<td>Apparel</td>
</tr>
<tr>
<td>684</td>
</tr>
<tr>
<td>Health-insurance</td>
</tr>
<tr>
<td>842</td>
</tr>
<tr>
<td>Medical services</td>
</tr>
<tr>
<td>420</td>
</tr>
<tr>
<td>Prescription drugs</td>
</tr>
<tr>
<td>510</td>
</tr>
<tr>
<td>Medical supplies</td>
</tr>
<tr>
<td>98</td>
</tr>
<tr>
<td>Personal-care products and services</td>
</tr>
<tr>
<td>203</td>
</tr>
<tr>
<td>Education</td>
</tr>
<tr>
<td>667</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
</tr>
<tr>
<td>253</td>
</tr>
</tbody>
</table>

8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $5,000 to $9,999</td>
</tr>
<tr>
<td>$6,000 to $10,000 to $15,000 to $20,000 to $25,000 to $30,000 to $40,000 to $50,000 to $70,000 and over</td>
</tr>
<tr>
<td>Food</td>
</tr>
<tr>
<td>5,763</td>
</tr>
<tr>
<td>Apparel</td>
</tr>
<tr>
<td>1,975</td>
</tr>
<tr>
<td>Health-insurance</td>
</tr>
<tr>
<td>428</td>
</tr>
<tr>
<td>Medical services</td>
</tr>
<tr>
<td>402</td>
</tr>
<tr>
<td>Prescription drugs</td>
</tr>
<tr>
<td>208</td>
</tr>
<tr>
<td>Medical supplies</td>
</tr>
<tr>
<td>54</td>
</tr>
<tr>
<td>Personal-care products and services</td>
</tr>
<tr>
<td>339</td>
</tr>
<tr>
<td>Education</td>
</tr>
<tr>
<td>150</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
</tr>
<tr>
<td>271</td>
</tr>
</tbody>
</table>

9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $10,000 to $14,999 to $19,999 to $25,000 to $30,000 to $40,000 to $50,000 to $70,000 and over</td>
</tr>
<tr>
<td>Food</td>
</tr>
<tr>
<td>5,799</td>
</tr>
<tr>
<td>Apparel</td>
</tr>
<tr>
<td>2,280</td>
</tr>
<tr>
<td>Health-insurance</td>
</tr>
<tr>
<td>927</td>
</tr>
<tr>
<td>Medical services</td>
</tr>
<tr>
<td>242</td>
</tr>
<tr>
<td>Prescription drugs</td>
</tr>
<tr>
<td>203</td>
</tr>
<tr>
<td>Medical supplies</td>
</tr>
<tr>
<td>82</td>
</tr>
<tr>
<td>Personal-care products and services</td>
</tr>
<tr>
<td>440</td>
</tr>
<tr>
<td>Education</td>
</tr>
<tr>
<td>260</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
</tr>
<tr>
<td>356</td>
</tr>
</tbody>
</table>

- 707 -
### Table: Debtors' Available Resources

<table>
<thead>
<tr>
<th>Category</th>
<th>Less than $10,000</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prescription drugs</td>
<td>162</td>
<td>146</td>
<td>164</td>
<td>257</td>
<td>341</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>46</td>
<td>38</td>
<td>64</td>
<td>67</td>
<td>74</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>626</td>
<td>476</td>
<td>326</td>
<td>475</td>
<td>507</td>
</tr>
<tr>
<td>Education</td>
<td>489</td>
<td>610</td>
<td>382</td>
<td>299</td>
<td>374</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>269</td>
<td>190</td>
<td>116</td>
<td>232</td>
<td>268</td>
</tr>
</tbody>
</table>

10. If the debtor's household consists of five (5) or more persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

### Table: Debtor's Available Resources

<table>
<thead>
<tr>
<th>Category</th>
<th>Less than $10,000</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>8,640</td>
<td>6,701</td>
<td>5,988</td>
<td>6,326</td>
<td>6,707</td>
</tr>
<tr>
<td>Apparel</td>
<td>2,592</td>
<td>1,861</td>
<td>1,672</td>
<td>1,852</td>
<td>2,103</td>
</tr>
<tr>
<td>Health insurance</td>
<td>306</td>
<td>314</td>
<td>392</td>
<td>518</td>
<td>898</td>
</tr>
<tr>
<td>Medical services</td>
<td>153</td>
<td>184</td>
<td>441</td>
<td>346</td>
<td>468</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>218</td>
<td>181</td>
<td>200</td>
<td>191</td>
<td>233</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>19</td>
<td>15</td>
<td>30</td>
<td>55</td>
<td>56</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>336</td>
<td>403</td>
<td>392</td>
<td>412</td>
<td>560</td>
</tr>
<tr>
<td>Education</td>
<td>358</td>
<td>283</td>
<td>160</td>
<td>311</td>
<td>355</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>136</td>
<td>90</td>
<td>98</td>
<td>88</td>
<td>272</td>
</tr>
</tbody>
</table>

Section 5. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of no more than ten (10) percent of the debtor's disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a penalty due to the employer's failure to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A withholding under this section shall not be grounds for discharge from employment, refusal to employ or disciplinary action against an employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6. (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall be made by:

(a) An officer authorized under KRS 454.140 to serve process; or

(b) A person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) For an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) His employee or agent with apparent authority signs or refuses to sign a receipt.

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.
CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, August 8, 2006)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4), (7), (8), 164.750(3), (4), (6), (8), 164.753-, 164.769, 164.780, 164.782, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31-1070d-41
STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.758, 164.759(5),(6),(7), 34 C.F.R. 654.30, 654.41, 41 STAT.U.S.C. 1070d-37, 1070d-38
NECESSITY, FUNCTION, AND CONFORMITY: [KRS 164.518(3) authorizes the authority to promulgate administrative regulations for administration of the Early Childhood Development
Scholarship Program. KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.752(3) authorizes the authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.744(4) requires the authority to promulgate administrative regulations governing work-study payments. KRS 164.760 establishes a teacher scholarship program and authorizes the authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.760 and under prior teacher scholarship programs administered by the authority. KRS 164.748(4) authorizes the authority to promulgate administrative regulations pertaining to the granting of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and authorizes the authority to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. 1070d-35 and 1070d-37, and 34 C.F.R. 664.30 and 664.41 require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholarship. This administrative regulation designates and incorporates the applications to be used under the [these] grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. In order to participate in a [the] specified grant, scholarship, or [and] work-study program [programs] administered by the Kentucky Higher Education Assistance Authority [authority], the following application forms shall be completed in accordance with their instructions:

(1) For the KHEAA Grant Program as set forth in 11 KAR 5:130, the [-] 2005-2007 Free Application for Federal Student Aid (FAFSA);
(2) For the KHEAA Work-Study Program as set forth in 11 KAR 6:010, the [-] KHEAA Work-Study Program Student Application;
(3) For the Teacher Scholarship Program as set forth in 11 KAR 6:030, the [-] Teacher Scholarship Application [May 2006 edition];
(4) For the Early Childhood Development Scholarship Program as set forth in 11 KAR 16:010:
   (a) The 2006-2007 Free Application for Federal Student Aid (FAFSA); and
   (b) The Early Childhood Development Scholarship Application [on the KHEAA Web site, www.kheaa.com/programs.html];
(5) For the Robert C. Byrd Honors Scholarship Program as set forth in 11 KAR 18:010:
   (a) For high school students, the Robert C. Byrd Honors Scholarship Program Application; and
   (b) For GED recipients, the Robert C. Byrd Honors Scholarship Program Application for GED Recipients.

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

(a) The "2006-2007 Free Application for Federal Student Aid, July 2006;
(b) The "KHEAA Work-Study Program Student Application", July 2001;
(c) The "Teacher Scholarship Application", June [July] 2006 [Edition];
(d) The "Early Childhood Development Scholarship Application", April 2008;
(e) The "Robert C. Byrd Honors Scholarship Program Application", June 2006; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or [the application shall be available] on the authority’s Web site, www.kheaa.com.

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS August 8, 2006)

11 KAR 5:140. KTG award determination procedure.

RELATES TO: KRS 164.744(2), [164.753(4)], 164.780, 164.785

STATUTORY AUTHORITY: KRS 164.744(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorory scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the award determination procedures for the Kentucky tuition grant program.

Section 1. Kentucky Tuition Grant (KTG) Program Awards. An application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination of eligibility for a KTG.

Section 2. KTG Need. For each KTG eligible applicant, the KTG need shall be computed according to the following formula:

KTG need equals total cost of education minus the sum of:

1. Expected Pell grant;
2. Expected family contribution; and
3. CAP grant.

Section 3. KTG Award. (1) If an applicant does not qualify for a CAP grant and the KTG need is an amount equal to or greater than $200, the KTG shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(3), except that KTG awards shall be offered only to the extent funds are available.

2. If an applicant does not qualify for a CAP grant, and the KTG need is an amount less than $200, an award shall not be made.

3. If an applicant has received a CAP award and KTG need is an amount equal to or greater than fifty (50) dollars, the KTG award shall be the lesser of the KTG need or the maximum grant specified in Section 5 of this administrative regulation except that KTG awards shall be offered only to the extent that funds are available.

4. A KTG award shall not exceed $2,000 ($2,860) for an academic year.

Section 4. (1) A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award.

2. A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

3. A semester award shall not exceed tuition and fee charges for that semester.

4. A KHEAA grant award shall not be made for a summer academic term.

Section 5. (1) A KHEAA grant award shall not exceed the applicant's total cost of education less expected family contribution and other anticipated student financial assistance.

2. The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the educational institution's determination of financial need for that student.

3. The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

4. If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds the need by more than $300, the amount over $300 shall be considered to be an overaward. If an overaward occurs, this amount shall be returned to the authority immediately.

Section 6. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

2. If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant for which the student was ineligible.

Section 7. (1) If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction.

2. If the grant for the fall academic term has already been disbursed, the reduction shall be made to the spring disbursement.

3. If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 8. Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the educational institution shall be deemed ineligible, and the grant shall be revoked.

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.
CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS August 8, 2006)

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4), 164.785, 164.786(3)

STATUTORY AUTHORITY: KRS 164.744(4), 164.753(4), 164.785(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorory scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.785(3) requires the authority to promulgate an administrative regulation that increases the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be $3,850 or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (2) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program shall be the lesser of:

(a) $950 ($866); or
(b) The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.

2. The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as deter-
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Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7283.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS August 8, 2006)

11 KAR 6:010. KHEAA Work-Study Program.

RELATES TO: KRS 164.744(2), 164.748(4), 164.753(5)
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4)
requires the authority to promulgate administrative regulations governing work-study payments. This administrative regulation establishes the KHEAA Work-Study Program.

Section 1. Definitions. (1) "Administrative cost allowance" means a payment negotiated between the authority and a participating institution for annual costs directly related to the administration of the KWS program and not exceeding eight (8) percent of the gross wages earned, the amount requested by the institution, or $15,000 annually, whichever is less.

(2) "Alternate work plan" means a work-study arrangement in which a participating student alternates a school term with a work term in accordance with Section 2 of this administrative regulation.

(3) "Authority" is defined in KRS 164.740(1).

(4) "Career-related work experience" means a job which has a correlation with the participating student's career direction determined by the participating institution and evidenced by the student's major course of study.

(5) "Cost of education" means those expenses commonly related to obtaining an education at the participating institution plus those costs directly related to the participating student's KWS work experience, including required duties and travel (all the rate allowed for state employee travel reimbursement) from the school to the place of employment or, under an alternate work plan, from the student's residence to the place of employment.

(6) "Eligible institution" is defined in KRS 164.740(3).

(7) "Financial need" means the total cost of education less financial assistance received from all sources, other than KWSP employment, including grants, loans, and scholarships.

(8) "Full-time" means the number of credit hours determined by the participating institution to constitute full-time enrollment, which:

(a) is generally twelve (12) semester hours, twenty-four (24) clock hours, or six (6) summer school hours; and

(b) Shall not include academic credit earned from KWSP employment.

(9) "KWSP" means the KHEAA work-study program.

(10) "Participating institution" is defined in KRS 164.740(13).

(11) "Prevailing wage rate" means a base rate of pay per hour for a KWSP participating student who is or would be performing equal job tasks as another employee, plus benefits paid to another employee having the same status as the KWSP employee.

(12) "Private employer" means an employer in the private sector, other than the institution that the participating student is attending.

(13) "School term" means the equivalent of one (1) semester, one (1) quarter, or one (1) summer school term.

(14) "Wage reimbursement" means a payment:

(a) Made to a participating employer by a participating institution as reimbursement for wages paid to a participating student; and

(b) Specified in an agreement between the participating employer and the participating institution.

(15) "Work study" is defined in KRS 164.740(20).

Section 2. Alternate Work Plan. A participating student shall be considered a participant under an alternate work plan if the student:

(1) Attends school full time one (1) school term;

(2) Works full time the next school term, including a summer, for a participating employer;

Section 4. (1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student.

(3) The KHEAA Grant Program Office (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his need by more than $300, any amount over $300 shall be considered to be an overaward. If an overaward occurs, the amount shall be returned to the authority immediately.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant, and:

(1) If the grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements, and the educational institution shall notify the student of the reduction;

(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement, and the educational institution shall notify the student of the reduction;

(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term, the educational institution shall notify the student of the fall overaward and the student shall repay the overaward to the authority;

(4) If both the fall and spring disbursements have been made, the educational institution shall notify the student of the overaward and the student shall repay the overaward to the authority.

Section 7. (1) Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant.

(2) Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.
CONTACT PERSON: Mr. Richard F. Casey, General Counsel,
Section 3. Institutional Eligibility. To participate in the KWSP, an educational institution shall:
(1) Be an eligible institution, located within Kentucky;
(2) Have in force an administrative agreement with the authority pursuant to 11 KAR 4.040;
(3) Submit a request for funding; and
(4) Execute a supplemental contractual arrangement with the authority and a participating employer.

Section 4. Funding Allocation Process. (1) Each year, the authority shall invite an eligible institution to submit a proposal for funding and shall provide instructions for submitting the proposal. The authority shall consider a proposal properly submitted by an eligible institution by the date specified in the invitation to participate. The authority shall award an administrative cost allowance, if the institution demonstrates need, to administer the KWSP for one (1) year. At least seventy-five (75) percent of wage reimbursement dollars shall be utilized with private employers.

(2) The authority shall consider the institution’s request for funding and its past performance in the KWSP in the determination of approval for funding and the funding level. The authority shall evaluate the institution’s level of participation in and administration of other programs of student financial assistance funded or administered by the authority and the institution’s ability to:
(a) Comply with this administrative regulation and contractual obligations under the KWSP;
(b) Administer the program cost-effectively with the greatest results for students, evidenced by previous years’ program records;
(c) Utilize the wage-reimbursement dollars allocated, evidenced by previous years’ program records;
(d) Avoid using KWSP dollars to supplant existing work-related programs for students; and
(e) Adequately monitor program activities, including eligibility determination of students and employers, continued eligibility of students and employers, and actual job activities as they relate to students’ career-related work experience.

(3)(a) At least ninety (90) percent of the available funds that do not exceed the appropriation for the preceding fiscal year shall be awarded to eligible institutions that participated and expended all or the major portion of their wage reimbursement allocation during the prior year.

(b) If available funds do not exceed the appropriation for the preceding fiscal year, the authority shall not award more than ten (10) percent of available funds to eligible institutions that did not participate or had minimal participation in the KWSP during the preceding fiscal year.

(c) Allocation by the authority of available funds that exceed the appropriation for the preceding fiscal year shall not be constrained by the level of participation by an eligible institution during the prior year.

(d) If available funds are not sufficient to award each institution the amount requested, the authority shall allocate funds to some or all of the eligible institutions that submit requests for funding, taking into consideration the institution’s past performance and level of funding under the KWSP, and the institution’s level of participation and demonstrated capability to administer other programs of student financial assistance funded or administered by the authority.

Section 5. Employer Eligibility. To participate in the KWSP, an employer shall:
(1) Provide a bona fide career related work experience for a participating student as determined by the participating institution in which the student is enrolled and submit a descriptive position analysis to the participating Institution;
(2)(a) If the employer is not a participating institution, execute a KWSP employer agreement with each participating institution from which a participating student is hired; or
(b) If the employer is a participating Institution, agree with the authority to be bound by the terms of a KWSP employer agreement;
(3) Provide a Kentucky work site for a participating student employed by the employer;
(4) Not be a business entity formed substantially for the purpose or intention of participating in the KWSP; and
(5) Not utilize a participating student in a work environment that is sectarian in nature or that involves political activity.

Section 6. Student Eligibility. To participate in the KWSP, a student shall:
(1) Be a citizen of the United States;
(2) Be a Kentucky resident, as determined by the participating institution in accordance with 13 KAR 2:045;
(3) Be enrolled or accepted for enrollment on at least a half-time basis at a participating institution, unless the student is participating in an alternate work plan;
(4) Demonstrate financial need;
(5) Be in good standing and making satisfactory academic progress toward completion of his educational program, as determined by the participating institution, and have a cumulative grade point average of not less than the equivalent of a "C" (inclusive of all postsecondary courses attempted for a postsecondary or secondary school grade point average for an entering freshman); and
(6) Not be participating in another work program administered by the participating Institution;
(7) Submit a completed Work-study Program Student Application as set forth in 11 KAR 4.080, Section 1(2), to the participating institution, properly completed in accordance with the instructions, and be approved for participation by the participating institution;
(8) Not be in default on a financial obligation to the authority under a program administered by the authority pursuant to KRS 164.740 through 164.7891, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause; and
(9) Execute an employment agreement required by the participating institution.

Section 7. Employer Responsibilities. To receive wage reimbursement, a participating employer shall:
(1) Immediately notify the participating institution in writing if a participating student’s employment is terminated, stating the reason for and effective date of termination;
(2) Report promptly to the participating institution any significant change of the position or the student’s work assignment,
(3) Submit to the participating institution on a regular basis a certified, accurate proof of wages paid to a participating student;
(4) Pay a participating student the prevailing wage rate, which shall not be less than the federal minimum wage;
(5) Comply with all federal and state employment, safety and civil rights laws applicable to the position filled;
(6) Not, without prior consent of the participating institution, permit or require a participating student to work in excess of:
(a) Thirty (30) hours per week for a student currently enrolled less than full time;
(b) Twenty (20) hours per week for a student currently enrolled full time; and
(c) Forty (40) hours per week for a student employed under an alternate work plan;
(7) Permit on-site inspection and review of records by a representative of the participating institution and the authority during normal business hours; and
(8) Ensure that a regular employee is not displaced by a KWSP participating student.

Section 8. Student Responsibilities. A participating student shall:
(1) Participate in all screening or preplacement activities required by the participating institution;
(2) Maintain eligibility pursuant to Section 6 of this administrative regulation, and immediately notify the participating institution in writing of any change that affects the student’s continued eligibility;
(3) Be available for a job interview if requested by a participating employer;
(4) Perform all reasonable employment obligations and comply with all reasonable policies and requirements of the participating employer.

Section 9. (1) An appeal regarding student or employer participation shall be directed to the participating institution and shall be reviewed, settled or determined by an appeal committee consisting of no fewer than three (3) individuals.

(2) An appeal regarding institutional eligibility or participation shall be determined by the authority in accordance with 11 KAR 4.020.

[Section 10. Incorporation by Reference. (1) "KHEA Work-Study Program Student Application" form, July, 2001, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or

(b) A participating institution during that institution's regular business hours.]

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.
CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 738, Frankfort, Kentucky 40602-0738, phone (502) 695-7290, fax (502) 695-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARR's, August 8, 2006)

11 KAR 8:030. Teacher scholarships.

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS
164.744(2) authorizes the authority to provide scholarships and
KRS 164.753(3) requires the Kentucky Higher Education Assis-
tance Authority to promulgate administrative regulations pertaining
to standards for scholarship programs. KRS 164.769 establishes a
teacher scholarship program and requires the Kentucky Higher
Education Assistance Authority to establish the terms and condi-
tions for the award, cancellation, and repayment of teacher schol-
aroars. Amendments to KRS 164.769 and under prior teacher
scholarship programs administered by the Kentucky Higher Edu-
cation Assistance Authority. This administrative regulation estab-
lishes selection criteria, disbursement procedures, cancellation
of repayment procedures and repayment obligations related to schol-
arships provided under the program.

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

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

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

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

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

(6) "Public school" means the common schools of the com-
monwealth providing preschool, elementary, middle school,
or secondary instruction.

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

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

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

(10) "Teaching means performing continuous classroom in-
struction as the teacher of record in a position for which appropri-
ate regular teacher certification is a prerequisite to perform
the instruction, and does not mean classroom instruction performed
pursuant to an emergency certification or a certificate for substitute

Section 2. Eligibility of Renewal Applicants and Selection Pro-
cess. (1) Applicants shall complete the Teacher Scholarship Ap-
lication set forth in 11 KAR 4 000, Section 1(3), [2004-2006],
according to its instructions. The applicant shall ensure that the com-
pleted application and supporting data indicating the applicant's
financial need are received by the authority on or before May 1, or
the next regular business day if May 1 falls on a weekend or holi-
day, preceding the academic year for which the award is re-
quested.

(2) Eligibility of renewal applicants.

(a) A person who previously received a loan or scholarship
pursuant to KRS 164.744, 164.753, or 164.769 prior to July 1, 1996 shall be eligible to apply for and be awarded a
renewal teacher scholarship without consideration of expected family contribution if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(b) A person who previously received a loan or scholarship
pursuant to KRS 164.744 [after July 1, 1996] shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

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

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

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

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

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

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

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

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

(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer. A copy of the disbursement roster containing each recipient's name and Social Security number shall be sent to the participating institution a disbursement roster containing each recipient's name and Social Security number.

(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.

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

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

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 10 of this administrative regulation.

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

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

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

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

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

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

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

(2) A recipient who received a teacher scholarship prior to July 1, 1996, in return for agreeing to obtain the appropriate recertification and to teach in a critical shortage area upon completion of the recertification program shall receive cancellation of the repayment obligation if the recipient renders qualified teaching service in that area or in another critical shortage area.

(3) If a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.155.

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

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

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

Section 7. Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

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

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

(4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment, and graduation of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. (1) A student who fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after his first day of class of the period of enrollment or changes enrollment status may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

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

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

(a) A clear and conspicuous written statement;

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

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

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

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

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

1. The requirements of applicable state law; or

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

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

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

(a) CAP grant;
(b) KTG;
(c) Teacher scholarship;
(d) Kentucky Educational Excellence Scholarship;
(e) National Guard tuition assistance, and
(f) Early Childhood Development Scholarship.

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

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

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

1. Cancellation, if not yet disbursed; or
2. Refund if the teacher scholarship has already been disbursed.

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

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

1. The student's name and Social Security number;
2. The reason for the refund,
3. The date of enrollment status change,
4. The semester and year; and
5. The calculation used for determining the refund.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Kentucky Higher Education Assistance Authority, 1080 U.S. 127 South, Suite 110, Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4:30 p.m.]

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.
CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, August 8, 2006)


RELATES TO: KRS 164.518
STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program.

Section 1. Eligibility of Applicants. (1) Initial eligibility. To qualify for an Early Childhood Development Scholarship, an applicant shall:

(a) Be:
1. A citizen, national, or permanent resident of the United States;
2. A Kentucky resident as determined by the participating educational institution in accordance with criteria established in 13 KAR Chapter 2 by the Council on Postsecondary Education for the purposes of admission and tuition assessment;
3. Unless the applicant is seeking scholarship renewal and has registered for a capstone semester:
   a. Employed at least twenty (20) hours per week in a participating early childhood facility;
   b. Employed to provide training at least twelve (12) times per year in early childhood development by a participating early childhood facility approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer the training; or
   c. Employed at least twenty (20) hours per week, providing direct instruction to children as a preschool associate teacher or as a teaching assistant in a public preschool program by a participating early childhood facility;
4. Except as provided in clause b of this subparagraph, enrolled in no more than nine (9) credit hours, or the equivalent under a trimester or quarter system, per academic term in the scholarship program curriculum at a participating educational institution;
5. An applicant who is enrolled in the fall semester of study before earning an ECDA-approved early childhood development credential may be enrolled in a capstone course requiring full-time enrollment, but shall not receive an award amount for more than nine (9) credit hours of enrollment;
6. Pursuing an ECDA-approved early childhood development credential;
7. Ineligible to receive professional development funds from another education program; and
8. Maintaining satisfactory academic progress as determined by the participating institution;

(b) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause.

(2) Renewal eligibility. Persons seeking additional early childhood development scholarships shall:

(a) Meet the eligibility requirements of subsection (1) of this section; and

(b) Be making satisfactory academic progress toward the completion of the ECDA-approved early childhood development credential as determined by the participating institution.

(3) Appeal of determination.

(a) A student denied a scholarship for a reason other than lack of funds may appeal the determination by the ECDA.

(b) A student shall submit a written statement of appeal to the ECDA within fifteen (15) calendar days after the date of notification of denial.

(c) If a student appeals a scholarship denial, the ECDA shall ensure that:
1. A hearing officer or committee appointed by ECDA shall
consider the student's appeal and make a decision on the issues involved; and

2. The student's due process rights, including the right to present information in support of his claim of eligibility and the right to be represented by legal counsel, are protected.

(4) Commitment of service. A scholarship applicant shall commit that he or she shall subsequently render service:

(a) For six (6) months at a participating early childhood facility upon obtaining the child development associate certificate, paid for in part by a scholarship;
(b) For one (1) year at a participating early childhood facility upon obtaining the early childhood development credential of an associate degree or the Kentucky Early Childhood Development Director's Certificate, paid for in part by a scholarship;
(c) For six (6) months at a participating early childhood facility and one (1) additional year at an early childhood facility located in Kentucky upon obtaining the early childhood development credential of a baccalaureate degree, paid for in part by a scholarship.


(2) The applicant shall:

(a) Print the employer verification page from the completed application;
(b) Have this page certified by an authorized representative of the participating early childhood facility; and
(c) Submit the certified page to the professional development counselor on or before:

1. July 15, or the next regular business day if July 15 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;
2. November 15, or the next regular business day if November 15 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or
3. April 15, or the next regular business day if April 15 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(3) The applicant shall also complete and submit to the United States Department of Education the Free Application for Federal Student Aid ("FAFSA") set forth in 11 KAR 4:090, Section 1(4)(a). This application may be completed either in paper form or electronically (electrally) via the Internet.

Section 3. Selection Process. (1) The professional development counselor shall verify the application information and determine the eligibility of the applicant.

(2) The professional development counselor shall recommend scholarship awards for eligible applicants in the following order until funds are depleted:

(a) First, scholarships shall be awarded to eligible renewal applicants, ranked in order of the date and time the application is submitted.
(b) Next, scholarships shall be awarded to eligible new applicants, ranked in order of the date and time the application is received by the professional development counselor.

(3) The professional development counselor shall forward to the ECDA the applications of those persons recommended to receive a scholarship and ensure that the applications are received by the ECDA no later than:

(a) July 22, or the next regular business day if July 22 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;
(b) November 22, or the next regular business day if November 22 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or
(c) April 22, or the next regular business day if April 22 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(4) The employer signature page shall be received by the ECDA no later than August 1, December 1, and May 1 of the appropriate semester.

(5) ECDA shall certify the eligibility determination of approved applicants.

Section 4. (1) Award amount. The scholarship amount awarded to an eligible applicant for an academic term shall be the amount of tuition actually charged for the academic term by the participating educational institution that the scholarship recipient will be attending based on the recipient's enrollment status, but shall not exceed:

(a) The amount of tuition charged for enrollment in nine (9) credit hours; and
(b) The award maximum.

(2) Award maximum. The maximum scholarship amount awarded to an eligible applicant for an award year shall be $1,600.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The Early Childhood Development Scholarship Application, January 2001; and,
(b) The 2006-2007 Free Application for Federal Student Aid ("FAFSA").

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 1050 S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM JACKSON, Chair

APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.

CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at AFRS August 8, 2006)


STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 34 C.F.R. 654.30, 654.41, 20 U.S.C. [902d-96], 1070d-37, 1070d-38 NECESSITY, FUNCTION, AND CONFORMITY: 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and requires the secretary to make grants to states for college scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. 1070d-35 and 1070d-37, and 34 C.F.R. 654.30 and 654.41 require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholars. This administrative regulation establishes application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program in Kentucky.

Section 1. Definitions. (1) "ACT score" means the composite score achieved on the American College Test at a national test site on a national test date.

(2) "Authority" is defined in KRS 164.740(1).

(3) "Award year" means the period of time from July 1 of one (1) year through June 30 of the following year.

(4) "Eligible student" is defined in KRS 164.740(5).

(5) "Federal act" is defined in KRS 164.740(7).

(6) "High school" means a school located within or outside of the Commonwealth of students for secondary school instruction that is:

(a) Operated by a state, or
(b) A private, parochial, or church secondary school that has been recognized as accredited, or voluntarily complying with accreditation standards, by one (1) of the fifty (50) state departments
of education or one (1) of the seven (7) independent regional ac-
crediting associations.

(7) 'High school graduate' means an individual who receives:
(a) A high school diploma;
(b) A General Education Development (GED) Certificate; or
(c) Any other evidence recognized by the commonwealth as the
equivalent of a high school diploma.
(8) "Participating institution" is defined in KRS 164.740(13).
(9) "SAT score" means the composite score achieved on the
Scholastic Aptitude Test at a national test site on a national test
date.
(10) "Scholar" means an individual who is selected as a Byrd
Scholar.
(11) 'Secretary' is defined in KRS 164.740(19).

Section 2. Eligibility Criteria. (1) Initial eligibility. To be eligible
for selection as a scholar, an individual shall meet the initial eligi-
bility criteria established in 34 C.F.R. 654.40.
(2) Continued eligibility. To remain eligible for additional
awards under this program for subsequent award years, a scholar
shall meet the continued eligibility criteria established in 34 C.F.R.
654.51.

Section 3. Initial Application Procedures. Applications submit-
ted by individual students shall not be accepted. In order for an
eligible student to be considered for an award under this program:
(1) The eligible student shall not have applied for consideration
in each prior year; and
(2)(a) For high school seniors, the eligible student's participating
high school shall nominate the eligible student, and shall submit
to the authority a completed application by February 15 on the
[form] set forth in 11 KAR 4.080, Section 10(5)(a). The application
shall be accompanied by the following supporting documenta-
tion pertaining to the eligible student:
1. A certified transcript showing the cumulative grade point
average for seven (7) semesters of high school;
2. An official ACT score or SAT score;
3. A high school guidance counselor's recommendation, not
exceeding fifty (50) words, pertaining to the student's promise of
continued academic achievement; and
4. A listing of honors, activities, and community service per-
formed during high school;
(b) For a GED recipient, a GED coordinator shall nominate the
eligible student, and submit to the authority a completed applica-
tion by June 30 on the Robert C. Byrd Honors Scholarship Pro-
gram [2006-2006] Application [form] set forth in 11 KAR 4.080, Section 10(5)(b). The application shall be accom-
panied by the following supporting documentation pertaining to the
eligible student:
1. An official General Education Development score certifica-
tion; and
2. The GED coordinator's recommendation, not exceeding fifty
(50) words, pertaining to the student's promise of continued aca-
demic achievement.

Section 4. Nomination Procedures. Each participating high
school shall select and submit applications as follows:
(1) Number of nominations per school. A participating high
school shall submit nominations according to the following guide-
lines:
(a) High schools with enrollments of 1,500 or more may nomi-
nate a maximum of five (5) applicants;
(b) High schools with enrollments of 1,000-1,499 may nomi-
nate a maximum of four (4) applicants;
(c) High schools with enrollments of 500-999 may nominate a
maximum of three (3) applicants; and
(d) High schools with enrollments of less than 500 may nomi-
nate a maximum of two (2) applicants.
(2) A participating high school shall nominate only eligible stu-
dents who:
(a) Have a minimum:
1. ACT score of twenty-three (23); or
2. SAT score of 1060; and
(b) Have a minimum 3.5 grade point average for seven (7)
semesters of high school.
(3) A GED coordinator shall nominate only eligible students
who have a minimum GED score of 2700.

Section 5. Selection Procedures. (1) Applications shall be re-
viewed to ensure compliance with the requirements set forth in
Sections 2, 3, and 4 of this administrative regulation.
(2) The authority shall sort acceptable applications according
to the six (6) congressional districts in order to ensure proportional
distribution.
(3) The authority shall evaluate and score applications on a
scientific basis by a stratified random technique, with consideration
to demonstrated outstanding academic achievement and promise
of continued achievement and reasonable geographic representa-
tion throughout the state.
(4) At least one (1) scholar shall be selected among the GED
recipients.
(5) A scholar shall be selected from eligible applicants without
regard to:
(a) The applicant's race, color, national origin, sex, religion,
disability, economic background, educational expenses, or finan-
cial need;
(b) Whether the scholar attended a high school located within
or outside of the commonwealth; or
(c) Whether the participating institution that the scholar plans to
attend is public or private or is within or outside the commonwealth.
(6) A selected scholar shall agree in writing that he shall repay to the
authority the total amount of the scholarship funds received for
the academic term during which he receives an award if the scholar is ineligible for the academic term as determined by the
participating institution or the authority.

Section 6. Notification Procedures. The authority shall notify
eligible students, tentatively selected as scholars, of their status
within forty-five (45) days after the application submission deadline.

Section 7. Award Amount. (1) The amount of the annual award
shall be governed by 34 C.F.R. 654.50 and 34 C.F.R. 654.51(b).
(2) A scholar shall receive an aggregate maximum of $6,000
over four (4) years for an undergraduate or an equivalent under-
graduate program of study if he or she maintains eligibility.

Section 8. Disbursements. (1) The first payment shall be made
at the beginning of the fall term after the participating institution has
certified that the scholar is enrolled on a full-time basis and that the
total amount of financial aid awarded to a scholar for a year of study,
including the scholarship amount awarded pursuant to this
administrative regulation, does not exceed the eligible student's total
cost of attendance.
(2) The award shall be paid in at least two (2) disbursements in the
amount of:
(a) 1. One-half (1/2) in the fall term; and
2. One-half (1/2) in the spring term; or
(b) For quarter-hour institutions, one-third (1/3) each quarter.
(3) The warrant shall be made payable to the scholar, but shall be
sent to the school for delivery to the scholar.
(4)(a) Except as provided in paragraph (b) of this subsection,
the award shall be utilized within twelve (12) months of the time of
initial award.
(b) The authority's [authority] executive director may author-
ize a postponement of the award utilization.
1. The postponement shall be for up to twelve (12) additional
months from the date the scholar:
a. Otherwise would have enrolled in the institution after the
scholarship award was made; or
b. Interrupts enrollment.
2. A postponement shall be granted only if:
(a) There is sufficient good cause; and
(b) The scholar requests in writing, before the payment is certi-
fied by the participating institution, that the award be delayed to
postpone or interrupt his enrollment.
(c) A scholar who postpones or interrupts his enrollment at a
participating institution in accordance with paragraph (b) of this
- 717 -
subsection shall not be eligible to receive scholarship funds during the period of postponement or interruption, but shall be eligible to receive scholarship payments upon enrollment or reenrollment at a participating institution.

(d) The authority may extend the twelve (12) month suspension period without terminating the scholar's eligibility if the scholar demonstrates to the satisfaction of the authority that extended postponement or interruption of enrollment beyond the twelve (12) month suspension is due to exceptional circumstances beyond the scholar's control or necessary for the scholar to meet a commitment.

[Section 8—Incorporation by Reference. (1) The following material is incorporated by reference:
(c) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 130 Airport Road, Frankfort, Kentucky 40604, Monday through Friday, 9 a.m. to 4:30 p.m. The application shall be available on the authority's website, www.KHEAA.com.]

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.
CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 796, Frankfort, Kentucky 40622-0796, phone (502) 686-7290, fax (502) 696-7293.

DEPARTMENT OF THE TREASURY
(As Amended at ARRS, August 8, 2006)

20 KAR 1:080. Reports to be filed by holders of unclaimed property.

RELATES TO: KRS 393.110(1), 393.130
STATUTORY AUTHORITY: KRS 393.280(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 393.280(4) allows the State Treasurer to promulgate administrative regulations and any reasonable and necessary rules for the enforcement of KRS Chapter 393. KRS 393.110(1) requires the holder of unclaimed property to submit annual reports to the Department of the Treasury concerning the property. This administrative regulation establishes the reporting requirements for a holder of unclaimed property.

Section 1. Reports Filed by a Holder of Unclaimed Property. A holder of unclaimed property shall annually file, in accordance with KRS 393.110, a completed, Unclaimed Property Report/Remit Form with the Department of the Treasury no later than the close of business on November 1 of each year.

(1) A holder of property presumed abandoned shall make an annual report to the Department of the Treasury concerning the property. The annual report shall cover the twelve (12) months ending on June 30 of that year. Holders are required to submit their report by diskette or compact disc in the format required by the department for ten (10) or more properties. All property so reported shall be turned over simultaneously with the report by November 1 to the Department of the Treasury. This reporting requirement applies to all properties, with the exception of travelers' checks and money orders, and shall be verified and shall include:
(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of $100 or more presumed abandoned under this chapter and in the case of unclaimed funds of life insurance corporations, the full name of the insured or policy owner and his or her last known address according to the records of the life insurance corporation,
(b) Identifying data of the property owner, including, but not limited to:
(i) Social Security number, date of birth, policy number,
(c) Description of the property, including, but not limited to:
(i) Physical description, property type codes, and the amount appearing on the records to be due, except items of value of $100 or less. The items of value of $100 or less may be reported in aggregate.
(d) The date when the property became payable, demandable, or resumable, and the date of the last known transaction with the owner with respect to the property if readily available.
(2) If the fair cash value of the property is more than $100, the holder of property presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than sixty (60) days before filing the report, stating that the holder is in possession of the property subject to this section. Except: The holder shall not be required to mail a notice to any apparent owner where the fair cash value of the property is $100 or less. The notice shall contain:
(a) The statement to the owner that properties are being held to which the address appears entitled;
(b) The name and address of the person holding the property and all necessary information regarding a change of name and address of the holder,
(c) A statement, if satisfactory proof of claim is not presented by the owner to the holder by the date specified, the property shall [will] be placed in the custody of the department to whom all further claims shall [will] be directed.
(3) A person shall turn over to the department all property not reportable as required by KRS Chapter 393 and this administrative regulation to the Department of the Treasury by November 1, unless:
1. Any person, as required by this chapter to report property presumed abandoned, shall, by November 1 of each year, turn over to the department all property so reported, unless:
(a) The person making the report of the owner of the property shall certify to the department that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist; or
2. The person is able to provide documentation of facts or circumstances that will rebut the presumption of abandonment;
(b) Shall certify the existence of any fact or circumstances which has a substantial tendency to rebut the presumption.
(4) If either of these conditions are met, then the person reporting or holding the property shall not be required to turn the property over to the department except on order of court.
(5) The holder of abandoned property shall maintain its records for a period of five (5) years from the date of its report for items reported in the aggregate.
(6) If the owner of the property reported in the aggregate makes a valid claim within five (5) years, the holder shall provide the owner with account data necessary for the department to identify the account from the aggregate amount.
(7) The annual reports shall be retained by the department for a period of five (5) years.
(7)(a) The department shall notify all apparent owners of the unclaimed property in accordance with this section by means of posting on the department's website.
(b) The department may use any of the following to provide additional notice to the apparent owners:
1. Publication in a newspaper of general circulation, or
2. A notice of publication, or
3. A notice to a newspaper of general circulation in the area in which the holder has its principal place of business in the state; or
4. Individual contact by regular or electronic mail, or by telephone, if the department has current contact information on file,
(a) shall, notwithstanding KRS 424.180 and 424.190, provide, on an annual basis, notice of the publication of the annual report to any apparent owners who have been notified by the department in accordance with this section shall employ the most cost-effective methods available for the submission of reports to the department and the notice or advertisement of property transferred to the de-
The cost of the publication shall be paid by the state.

(4) The advertisement shall be published as required on or before October 1 following the year when the report was received, and the publisher shall be paid a prompt notice to all parties.

(8) (E) If a person files an action in court claiming any property which has been reported, or to be reported, under the provisions of this chapter, the person reporting or holding the property shall be under no duty, while the action is pending, to turn the property over to the department, but shall have a duty of notifying the department of the pendency of the action.

(9) (F) The person reporting or holding the property or any claimant of it shall always have the right to a judicial determination of his or her rights under this chapter, and nothing in this chapter shall be construed otherwise. The Commonwealth may institute an action to recover the property presumed abandoned, whether it has been reported or not, and may include in one (1) petition all property within the jurisdiction of the court in which the action is brought, if the property of different persons is set out in separate paragraphs.

Section 2. Reports on Property Held in an Interest Bearing Account. If the holder of unclaimed property is required to place the property in an interest-bearing account, pursuant to KRS 393.130, the holder shall submit to the Department of the Treasury the following reports: A statement on the interest-bearing account holding unclaimed property. The statement shall:

(1) Be the kind normally issued on an interest-bearing account;
(2) Be filed with the Department of the Treasury on an annual basis according to the holder's normal course of business; and
(3) Include the value of the unclaimed property and the amount of the interest paid on the account.

Section 3. Reports on an Amount Paid Out of an Account Holding Unclaimed Property. (1) A holder of an account holding unclaimed property shall file a report within ten (10) business days of paying an amount out of the account.

(2) The report shall include:

(a) The name, Social Security number, and the address of the property owner;
(b) The amount paid;
(c) The portion of the amount that represents interest paid and the portion that represents the original amount of unclaimed property;
(d) The date the property was presumed abandoned;
(e) Proof of payment;
(f) An itemization of each fee or expense charged against the account; and
(g) An affidavit indicating:

1. What specific proof was used in determining that the person that received the payment was the rightful claimant; and
2. That the procedures for paying a claim for unclaimed property as established in 20 KAR 1:040 were followed.

(3) The report shall be filed at the Department of the Treasury.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of the Treasury, 1050 U.S. Hwy. 127 South, Suite 100, [Capitol Annex, Room 168], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00 p.m.

JONATHAN MILLER, Kentucky State Treasurer
APPROVED BY AGENCY: May 22, 2006
FILED WITH LRC: May 24, 2006 at 4 p.m.
CONTACT PERSON: Brenda Sweatt, Kentucky Department of the Treasury, 1050 U.S. Hwy. 127 South, Suite 100, Frankfort, Kentucky 40601, phone (502) 564-4722, fax (502) 564-4200.

GENERAL GOVERNMENT CABINET
Real Estate Commission
(As Amended at ARS, August 6, 2006)

201 KAR 11:105. Advertising listed property; advertising public information about specific property - when consent and authorization of owner or principal broker is required [Owner's consent and authorization].

RELATES TO: KRS 324.117(4), (4), 324.160(4)(w), (6) STATUTORY AUTHORITY: KRS 324.281(5), 324.282 NECESITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Kentucky Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes certain standards for advertising real estate.

Section 1. A real estate broker shall not offer real estate for sale or lease without the consent of the owner. If promoting or advertising the real estate to the general public, the broker shall have a written listing agreement signed by the owner. A buyer's agent may advertise or promote his or her participation in the sale after a binding contract is created.

Section 2. A sign shall not be placed on any property by a real estate licensee without the written consent of the owner.

Section 3. (1) In accordance with KRS 324.117(4), a real estate property print advertisement of a licensee, or an offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease, shall include the name of the real estate company where the licensee's license is held or the name of the real estate company's principal broker with whom the licensee is affiliated.

(2) If the advertisement includes the name of the real estate company's principal broker, the principal broker's name shall include his or her title as principal broker or be followed by any other clear designation of his or her status as a broker.

(3) The requirements in this section shall apply to advertisements for listed property only.

Section 4. (1) An advertisement by a licensee shall be approved by the principal broker with whom the licensee is affiliated or by an individual designated by the principal broker to approve the advertisement.

(2) A principal broker shall require his or her licensee to:

(a) Discuss with the property owner-client the advertising requirements of KRS 324.117;
(b) Provide the owner-client with written notice of these advertising requirements; and
(c) Obtain the owner-client's written agreement to comply with the advertising requirements.

Section 5. A licensee may advertise public information, such as sales price, of properties that have sold and closed, even if the licensee did not have a written listing agreement on the property.

Section 6. A licensee may advertise the listings of another real estate brokerage company only if:

(1) The licensee has requested and obtained the listing broker's consent to advertise the other company's listings;

(2) The licensee's advertisement of the other company's listings includes the complete name of the other real estate brokerage company.

RON SMITH, Chairperson
APPROVED BY AGENCY: May 15, 2006
FILED WITH LRC: May 15, 2006 at 11 a.m.
CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10500 Linet Stratton Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.
GENERAL GOVERNMENT CABINET
Real Estate Commission
(As Amended at ARRS, August 8, 2006)

201 KAR 11:220. Errors and omissions Insurance requirements.

RELATES TO: KRS 324.010, 324.395
STATUTORY AUTHORITY: KRS 324.282, 324.395(4), (5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282
authorizes the Kentucky Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of
KRS Chapter 324. KRS 324.395(4) allows licensees the option of obtaining errors and omissions insurance independently, and KRS
324.395(5) requires the commission to determine the terms and conditions of errors and omissions insurance coverage. This ad-
ministrative regulation sets forth procedures and standards for obtaining insurance independently.

Section 1 (1) An Insurance company [insurer] providing real estate errors and omissions insurance for real estate licensees shall [must] provide a signed certification to the insured licensee [containing the language prescribed by the commission] which shall [will] confirm that the obligations of the insurance company meets the minimum requirements set forth in this administrative regulation.

(2) A licensee [insured] who chooses [elects] to be insured by other than the group insurance policy obtained by the commission shall file the private policy certification of coverage [with the commission] with his or her [the] license renewal application in accordance with KRS 324.395(6). This certification shall be available on the commission's Web site, www.krec.ky.gov, and shall be included in the yearly renewal package mailed to all principal brokers.

Section 2. The Insurance for which the certification has been executed shall [may] not be terminated, cancelled, lapse, or non-
renewed unless [without] the insurance company has [having] provided the commission with prior written notice.

Section 3. The minimum requirements for the coverage contained in the insurance policy for which the certification has been executed shall provide that:
(1) Coverage shall be that known as real estate agents errors and omissions insurance or real estate agents professional liability insurance.
(2) The limit of liability shall be no less than $100,000 for any one (1) claim nor less than $1,000,000 annual aggregate limit of liability, including the cost of investigation and defense. A principal broker or a principal broker's designee shall not purchase independent errors and omissions insurance, "firm coverage" insurance shall [must] have the following aggregate amounts:
(a) One (1) - ten (10) licensees shall [must] carry a $1,000,000 annual aggregate;
(b) Eleven (11) - forty (40) licensees shall [must] carry a $2,000,000 annual aggregate and;
(c) Forty-one (41) + licensees shall [must] carry a $5,000,000 annual aggregate. [For independently earned individual-type coverage, the following minimum requirements shall apply:
(a) A per claim limit of not less than $100,000;
(b) The maximum deductible for an individual policy for damage and defense, each licensee, and each claim shall not be more than the deductible of the commission group policy for the current policy term. The limit of liability shall be no less than $100,000 for any one (1) claim nor less than $1,000,000 annual aggregate limit of liability, including the cost of investigation and defense];
(3) The maximum deductibles, which may be separate deductibles, shall [may] not exceed $2,500 for judgment or settle-
ment and $1,000 for the cost of investigation and defense. [For independently earned individual-type coverages, the following minimum requirements shall apply:
(a) A per claim limit of not less than $100,000; (b) An aggregate limit shall be as follows:
1. Not less than $250,000 for a broker or firm with two (2) through ten (10) licensees;
2. Not less than $500,000 for a broker or firm with eleven (11) through forty (40) licensees;
3. Not less than $1,000,000 for a broker or firm with forty-one (41) or more licensees;
(a) There is no maximum deductible limit for firm umbrella-type coverage policies. [The maximum deductible, which may be separate deductible, may not exceed $2,500 for judgment or settlement and $1,000 for the cost of investigation and defense];
(4) Coverage shall apply for any covered claim resulting from a licensed activity that occurred subsequent to April 1, 1987 unless the [such] claim has been made against the licensee before the issuance date of the policy.

Section 4. Except as provided in Section 5 of this administrative regulation, coverage may not exclude claims brought against the insured [insured] arising out of an act or failure to act by the insured licensee when performing a professional service for which a license is required by the Commonwealth of Kentucky under KRS 324.010.

Section 5. Coverage may exclude claims brought against the insured [insureds] regardless of whether the professional service involves an activity for which a license is required by the Commonwealth of Kentucky:
(1) Aising out of or dishonest, fraudulent, criminal or malicious act, error, or omission, if committed by, at the direction of, or with the knowledge of the insured;
(2) Aising as a result of the insolvent of the insured;
(3) Brought about or contributed to by any inability or failure to pay or collect premium, escrow or tax money;
(4) Brought about by any employee or former employee aning out of the contract of employment with the insured and alleging breach thereof;
(5) Aising out of any injury or damage which the insured either expected or intended;
(6) For bodily injury, sickness, disease, or death of any person or physical injury to or destruction of or loss of use of tangible property;
(7) Aising out of libel, slander, defamation of character, false arrest or imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, or publications or utterances in violation of an individual's right of privacy, or malicious prosecution;
(8) Aising out of services performed by the insured which are subject to the Employee Retirement Income Security Act of 1974 as amended;
(9) Aising out of any violation of the Securities Act of 1933 as amended or the Securities Exchange Act of 1934 as amended or any state blue sky or securities law or similar state or federal statutes;
(10) Aising out of the conversion, misappropriation, commingling, or defalcation of funds or other property;
(11) Brought against a real estate property manager for failure to effect or maintain adequate levels or types of insurance;
(12) Aising out of unlawful discrimination;
(13) Aising out of liability assumed by the insured under any indemnity, hold harmless or similar provisions or agreements, except [but] this exclusion shall [does] not apply to liability the insured would have in the absence of such agreements;
(14) Aising out of the insured's business and brought by or on behalf of an Investor, shareholder or partner in any corporation, limited or general partnership, real estate trust or venture in which the insured has, or had, a participating interest, directly or indirectly, in the profits or losses thereof, or in connection with the insured's activities as an underwriter, sponsor, partner, joint or coventurer or member in any real estate partnership, venture or syndicate;
(15) Aising out of, relating to or based upon the dispersal, discharge, escape, release or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases or other materials, irritants, contaminants, or pollutants. Pollutants shall
include any solid, liquid, gaseous, thermal, biological or radioactive substance, material, matter, toxic, irritant or contaminant, including radon, asbestos, chemicals and waste. Waste shall include materials to be recycled, reconditioned, or reclaimed, material, irritant, contaminant or pollutant in or into the atmosphere, or on, onto, upon, in or into surface or subsurface, including soil, water or watercourses, objects and any tangible or intangible manner, whether sudden or not, by-whomsoever or whatsoever made, including [not-including] [and-not-limited-to] [any-public, private, or governmental person, concern, body, entity, agency, office or corporation; or]

(16) That are excluded by the Nuclear Energy Liability Exclusion Endorsement (broad form) filed by the Insurance Services Office, Inc. with the Kentucky Department of Insurance and identified as form #II. 00 21 11 05;2]

(17) Arising from the sale or property management of property developed, constructed or owned by the insured, or by any firm or corporation in which the insured has a financial interest, or by any firm coming under the same financial control as the insured, except that this exclusion shall [does] not apply and coverage is extended to claims arising from the sale of real property, provided all three of the following conditions are met:

(a) The property was acquired by the insured under a guaranteed sale listing contract; and

(b) The title to the property was only temporarily held by the insured during the transit period (not to exceed one (1) year) from acquisition to resale; and

(c) The property is listed for sale during the entire transit period, or

(18) Arising out of the interests, operations or activities of the insured as a mortgage banker or correspondent, escrow agent, construction manager or property developer, [An Insured shall [will] not be considered engaging in the activities of an escrow agent merely because the insured holds earnest money deposits, rental deposits, or similar items].

[Section 6. The insurance company and the licensee may agree that the insurance policy issued to the licensee may contain deductibles higher than those established in this administrative regulation as the maximum deductible and/or it may contain terms, conditions, limitations and exclusions other than those established by the administrative regulation as the minimum required coverages, provided the insurance company, by having executed the certification, shall remain liable to pay on behalf of the insured, licensee, all amounts in excess of the prescribed maximum deductible or all amounts from any other claims excluded or limited by provisions more restrictive than the required minimum coverages of the defendant licensee fails to promptly do so. In the event, however, that the insurance company is required by having executed the certification to make payments in claims or in defense of a claim that would not have been required by the terms and conditions of the policy except for the provision, the insurance company shall not be precluded from using any legal remedy for recovering reimbursement of such amounts from the insured-licensee.]

RON SMITH, Chairperson
APPROVED BY AGENCY: July 14, 2006
FILED WITH LRC: July 14, 2006 at noon
CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

GENERAL GOVERNMENT CABINET
Real Estate Commission
(As Amended at ARRS, August 8, 2006)

201 KAR 11:50. Listing and purchase contracts and other agreements entered into by licensees; provisions required.

RELATES TO: KRS 324.160(4)(y), (w), 324.281(5)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes standards for listing and purchase contracts and standards for other types of agreements between licensees and consumers involving real estate brokerage.

Section 1. A listing contract [Listing-contracts] shall include the:

1. Listing price of the property, unless the sale is to be by auction;

2. Date and time of the signing of the listing contract for all parties who sign;

3. Date and time of expiration of the listing contract;

4. Fee or compensation agreed upon;

5. Street, address or location of the real estate listed for sale;

6. Signatures of all owners;

7. Special directions of the owner concerning limitations on showings and subagency restrictions; and

8. Date and time for initialing of all changes on the contract.

Section 2. An offer to purchase or a counteroffer prepared by or at the direction of a licensed agent shall include the:

1. Purchase price, the amount of contract deposit given and who is to hold the deposit;

2. Date and time of signing of the offer or counteroffer for all parties who sign;

3. Date and time when the offer or counteroffer expires;

4. Street, address or a general description of the real estate sufficient to identify the parcel;

5. Names of the offering party and the agent who prepared the offer or counteroffer; and

6. Provision setting forth the date by which the closing shall occur and when possession shall be given to the buyer.

Section 3. (1) If a licensee presents an offer to purchase real estate for which an executory contract to sell the property is already in existence, the offer shall indicate in writing that the offer is contingent upon the nonperformance of the existing executory contract by inserting the following provision in the offer. "This offer is submitted as a back-up offer, which means the property is subject to a previously-accepted offer which has priority over this offer."

(2) The provision required in subsection (1) of this section shall be:

(a) Inserted by the licensee who presents the offer to purchase, if he is aware of the existing contract; and

(b) Made by the listing licensee as a counteroffer.

Section 4. Contracts to Contain Financing Provisions. A contract [All-contracts] providing for the purchase of property shall specifically set forth:

1. The manner in which the purchase shall be financed; and

2. The amount of any encumbrance and whether same is to be undertaken by the seller or a commercial institution or otherwise.

Section 5. Any agreement for compensation from a licensee to his or her client or customer shall be in writing. If a licensee fails to comply with the requirement in this section, the licensee's conduct shall be considered improper and in violation of KRS 324.160(4)(v).

RON SMITH, Chairperson
APPROVED BY AGENCY: May 15, 2005
FILED WITH LRC: May 15, 2006 at 11 a.m.
CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.
VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

GENERAL GOVERNMENT CABINET
Real Estate Commission
(As Amended at ARR, August 8, 2006)

201 KAR 11:350. Seller's disclosure of property conditions form.

RELATES TO: KRS 324.360
STATUTORY AUTHORITY: KRS 324.281(5), 324.282,
324.360(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
324.360(2) requires the Kentucky Real Estate Commission to
promulgate an administrative regulation authorizing a "seller's
disclosure of conditions form" and KRS 324.360(3) sets forth matters
which the form shall contain and allows the inclusion of additional
matters. This administrative regulation establishes the required
"Seller Disclosure of Property Condition" form required by KRS
324.360.

Section 1. The "Seller Disclosure of Property Condition" form
established in Section 2 of this administrative regulation shall be
completed and signed as required by KRS 324.360 by a seller of
residential real estate.

Section 2. "The Seller Disclosure of Property Condition" form
shall be in the following format:

"SELLER DISCLOSURE OF PROPERTY CONDITION"

The information in this form is based upon the undersigned's
observation and knowledge about the property during the period
beginning on the date of his or her purchase of it on (date of pur-
chase) and ending on [only for the period the undersigned owned
the property beginning (date of purchase) to] (date of this form).

PROPERTY ADDRESS:
This form applies to sales and purchases of residential real
estate
This form is required for:
1. Residential purchases of new homes if a warranty is offered;
2. Sales of real estate at auction; or
3. A court supervised foreclosure.

PURPOSE OF STATEMENT: Completion of this form shall satisfy
the requirements of KRS 324.360 which mandates the seller's
disclosure of information about the property he is about to sell. This
disclosure is based solely on the seller's observation and knowl-
edge of the property's condition and the improvements thereon.
This statement shall not be a warranty by the seller or seller's
agent and shall not be intended as a substitute for an inspection or
warranty the purchaser may wish to obtain. This is a statement of
the conditions and information concerning the property known by
the seller. Unless otherwise advised, the seller does not possess
any general, specific, or architectural, engineering, or any
other specific areas related to the construction or condition of the
improvements on the property. Other than having lived at or owning
the property, the seller possesses no greater knowledge than
that which could be obtained upon a careful inspection of the
property by the potential buyer. Unless otherwise advised, the
seller has not conducted any inspection of generally inaccessible
areas such as the foundation or roof. It is not a warranty of any kind
by the seller or by any agent representing any seller in this transac-
tion. It is not a substitute for any inspections. Purchaser is encour-
gaged to obtain his or her own professional inspections.

INSTRUCTIONS TO THE SELLER: (1) Complete all numbered
items. (2) Report all known conditions affecting the property. (3)
Attach additional pages, if necessary, with your signature and date
and time of signing. (4) Complete this form yourself or sign the
authorization at the end of this form to authorize the licensee to
complete this form on your behalf in accordance with KRS
324.360(9). (5) If some items do not apply to your property, write
"not applicable". (6) If you do not know the answer to a question,
write "unknown".

SELLER'S DISCLOSURE: As seller, I/we disclose the following
information regarding the property. This information is true and
accurate to the best of my/our knowledge as of the date signed.
Seller authorizes the agent to provide a copy of this statement to a

<table>
<thead>
<tr>
<th>1. HOUSE SYSTEMS</th>
<th>Yes</th>
<th>No</th>
<th>Unknown</th>
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<tbody>
<tr>
<td>Any past or current problems affecting:</td>
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<tr>
<td>(a) Plumbing</td>
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<td>(b) Electrical system</td>
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<td>(c) Appliances</td>
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<td>(d) Floors and wall</td>
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<tr>
<td>(e) Doors and windows</td>
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<tr>
<td>(f) Ceiling and attic fans</td>
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<tr>
<td>(g) Security system</td>
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<tr>
<td>(h) Sump pump</td>
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<tr>
<td>(i) Chimneys, fireplaces, inserts</td>
<td></td>
<td></td>
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<tr>
<td>(j) Pool, hot tubs, saunas</td>
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<td></td>
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<tr>
<td>(k) Sprinkler system</td>
<td></td>
<td></td>
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<tr>
<td>(l) Heating: age</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(m) Cooling/air conditioning: age</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

Explain:

2. FOUNDATION/STRUCTURE/BASEMENT |

(a) Any defects or problems, current or past, to the foundation or slab? |

(b) Any defects or problems, current or past, to the structure or exterior veneer? |

Explain:

(c) Has the basement leaked at any time since you have owned or lived in the property? |

(d) When was the last time the basement leaked? |

(e) Have you ever had any repairs done to the basement? |

(f) If you had repairs done to the basement relative to leaking, when was the repair performed? |

Explain:

(g) If the basement presently leaks, how often does it leak? (e.g., every time it rains, only after an extremely heavy rain, etc.) |

(h) Have you experienced, or are you aware of, any water or drain-
age problems with regard to the crawl space? |

3. ROOF |

(a) Age of the roof? |

(b) Has the roof leaked at any time since you have owned or lived in the property? |

(c) When was the last time the roof leaked? |

Explain:

(d) Have you even repaired the roof? |

(e) If the roof presently leaks, how often does it leak? (e.g., every time it rains, only after an extremely heavy rain, etc.) |
(i) Have you ever had roof repairs that involved placing shingles on the roof instead of replacing the entire roof?

(ii) If you have ever had roof repairs that involved placing shingles on the roof instead of replacing the entire roof, when was the repair performed?

4. LAND/DRAINAGE
(a) Any soil stability problems?
(b) Has the property ever had a drainage, flooding, or grading problem?
(c) Is the property in a flood plain zone?
(d) Is there a retention/detention basin, pond, lake, creek, spring, or water shed on or adjoining this property?

5. BOUNDARIES
(a) Have you ever had a staked or pinned survey of the property?
(b) Do you know the boundaries?
(c) Are the boundaries marked in any way?
(d) Are there any encroachments or unrecorded easements relating to the property of which you are aware?

6. WATER
(a) Source of water supply
(b) Are you aware of below normal water supply or water pressure?
(c) Is there a water purification system or softener remaining with the house?
(d) Has your water ever been tested? If yes, give results

7. SEWER SYSTEM
(a) Property is served by:
   1. Category I: Public Municipal Treatment Facility (public sewer);
   2. Category II: Private Treatment Facility (private sewer);
   3. Category III: Subdivision Package Plant (septic-tank);
   4. Category IV: Single Home Aerobic Treatment System (AKA: "Home Package Plant") (sewer sewer);
   5. Category V: Septic Tank with drainfield, lagoon, wetland, or other onsite disposal (leachfield);
   6. Category VI: Septic Tank with disposal to on-site, multi-property cluster treatment system (aeration-tank);
   7. Category VII: No Treatment/Unknown
   (b) For properties with Category IV, V, or VI systems: Date of last inspection [if not a public or private sewer]
      Date of last inspection: end
      Date last cleaned:
(c) Are you aware of any problems with the sewer system?

8. CONSTRUCTION/REMODELING
(a) Have there been any additions, structural modifications, or other alterations made?
(b) Were all necessary permits and government approvals obtained?

9. HOMEOWNER'S ASSOCIATION
(a) 1. Is the property subject to rules or regulations of a homeowner's association?
    2. If yes, what is the yearly assessment? $ 
(b) Are you aware of any condition which may result in an increase in taxes or assessments?
(c) Are any features of the property shared in common with adjoining landowners, such as walls, fences, driveways, etc.?

10. MISCELLANEOUS
(a) Was this house built before 1978?
(b) Are you aware of any use of ureaformaldehyde, asbestos materials, or lead-based paint in or on this home?
(c) Are you aware of any testing for radon gas?
(d) Are you aware of any underground storage tanks, old septic tanks, field lines, cisterns, or abandoned wells on the property?
(e) Are you aware of any present or past wood infestation (i.e., termites, bores, carpenter ants, fungi, etc.)?
(f) Are you aware of any damage due to wood infestation?
(g) Have the house or other improvements ever been treated for wood infestation?
(h) Are you aware of any existing or threatened legal action affecting this property?
(i) Are there any assessments other than property assessments that apply to this property (i.e., sewer assessments)?
(j) Are you aware of any violations of local, state, or federal laws, codes, or ordinances relating to this property?
(k) Are you aware of any other conditions which are defective with regard to this property?
(l) Are there any environmental hazards known to seller?
(m) Are there any warranties to be passed on?
(n) Has this house ever been damaged by fire or other disaster (i.e., tornado, hail, etc.)? If yes, please explain.
(o) Are you aware of the existence of mold or other fungi in the property?
VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

GENERAL GOVERNMENT CABINET
Real Estate Commission
(As Amended at ARRS August 3, 2006)

201 KAR 11:400. Agency disclosure requirements.

RELATES TO: KRS 324.160(4)(e), (n)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation establishes a specific format for disclosing prior relationships, if any, between a broker or sales associate and the parties in a residential transaction (1. (1)) ensures the licensee informs each party in the transaction about the nature of any prior-existing relationship between the licensee and either party, prior to any party providing his or her written consent for the licensee to act as a dual agent, representing both parties in the transaction, and (2) have documented evidence that the disclosure occurred.

Section 1. Definitions. (1) "Business relationship" means any arrangement whereby a licensee and a party or have or had a mutual financial ongoing interest in any company, corporation, or other income-producing venture, including any prior representation by the licensee for the party's purchase or sale of real estate, but does not include the current real estate transaction.
(2) "Commercial transaction" means a transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, single-family residential lot, or agricultural property.
(3) "Confidential information" means information that would materially compromise the negotiating position of a party or prospective party to a real estate transaction if disclosed to the other party.
(4) "Contact" means discussion or correspondence between a licensee and an identified prospective party involving the licensee's services related to a mutually-contemplated real estate transaction.
(5) "Delivery" means delivery of an item to a party or prospective party by:
(a) Mail;
(b) Facsimile transmission;
(c) Electronic mail;
(d) Messenger; or
(e) Hand.
(6) "Family relationship" means any known familial relationship between a licensee and party regardless of distance of the relationship.
(7) "Party" means one represented by a real estate licensee, (a)
(8) "Personal relationship" means a platonic or nonplatonic friendship between a licensee and a party.
(9) "Prospective party" means a person who:
(a) Has contact with a licensee; and
(b) Has not entered into a brokerage agreement with a licensee relative to the contemplated transaction.

Section 2. The provisions of this administrative regulation shall not apply to:
(1) Sale of real estate at auction;
(2) Property management of real estate; or
(3) Commercial transaction.

Section 3. Prospective Party Information. (1) A licensee shall complete either the "Consumer Guide To Agency Relationships (For Companies That Allow Only Dual Agency (No Designated Agency) - Model Policy)" or the "Consumer Guide To Agency Relationships (For Companies That Allow Designated Agency & Dual Agency - Model Policy)" whichever is applicable, (Item 1-3 of "Section A" of the Agency Information and Disclosure Form) and deliver it to the appropriate [a] prospective party prior to:
(a) Receiving confidential information from a prospective party relative to a mutually-contemplated real estate transaction;

Ron Smith, Chairperson
APPROVED BY AGENCY: July 14, 2006
FILED WITH LRC: July 14, 2006 at noon
CONTACT PERSON: Y. Donnie Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7248.
VOLUME 33, NUMBER 3 - SEPTEMBER 1, 2006

(b) Entering a representation agreement or submitting an offer to, or on behalf of, a prospective party; and
(c) The conclusion of the second contact between the licensee and a prospective party.

(2) The commission's Consumer Guide to Agency Relationships Model Policies and the filed Agency Disclosure Statements [Statement] [Agency Information and Disclosure Form] shall provide:
(a) Relationships available between the licensee and prospective party in Kentucky;
(b) The specific relationship proposed between the licensee and prospective party;
(c) The name of the licensee completing the form, the name of the principal broker of the licensee, and the name of the licensee's real estate company;
(d) The name of the prospective party; and
(e) The signature and date of signing by the prospective party.

(3)(a) The commission's "Consumer Guide to Agency Relationships" model policies may be revised by a broker to include the broker's company-specific information, including brochures, and any other revisions which shall constitute a change or changes in the form of either or both model policies, but shall not constitute any change in the substance of either of them.

(b) Model policies that have been properly revised by a broker may be completed and delivered by the broker to a prospective party as substitutes for the commission-required model policies, to satisfy the requirements set out in Section 3 of this administrative regulation.

(c) A licensee shall solicit the signature of a consumer on the appropriate consumer guide as an acknowledgment by the consumer of his or her receipt of it and as evidence of the licensee's compliance with this provision. [licensee shall complete "Section B" of the "Agency Information and Disclosure Form", if dual agency is being offered to the party. If dual agency is being offered, the completed "Section B" shall be delivered to the party prior to an offer being submitted. "Section B" shall provide:
(a) The name of the other party represented in the transaction by the licensee;
(b) The address of the property that is the subject of the transaction;
(a) An indication of whether the licensee is acting as a party to the transaction;
(b) An indication of whether the licensee is acting as a party to the transaction;
(c) Whether any financial interest in the property that is the subject of the transaction, or
(d) Anticipating having any financial interest in the property that is subject to the transaction;
(e) Whether any licensee acting as a dual agent has a personal, family, or business relationship with the other non-represented party to the dual agency;
(f) The signature and signature date of the licensee, and
(g) The signature and signature date of the party's consent to dual-agency.]

(4)(a) An "Agency Disclosure Statement" [Information and Disclosure Form] that has been developed by the broker or sales associate shall be submitted to the commission for its prior approval.

(b) The general counsel of the commission shall:
1. Review the form;
2. Make a recommendation to the commission that the form be approved or disapproved; and
3. Inform the broker or sales associate of the commission's decision.

(5) The agency disclosure statements shall be given to the consumer and signed at the time a buyer is making an offer and at the time a seller is reviewing that offer.

(a) A licensee shall complete Section I of the Agency Disclosure Statement if the real estate transaction involves agents from two (2) different companies. In such transactions, the licensee shall provide [complete Section I, providing on the appropriate lines the licensor's name and the name of the real estate brokerage company along with the name of the principal broker for that company.

(b) A licensee shall complete Section II of the Agency Disclosure Statement if the real estate transaction involves two (2) agents in the same real estate brokerage company. In such transactions, the licensee shall designate whether the transaction involves designated agency or dual agency by checking the appropriate box.

1. If the real estate transaction involves designated agency, the licensee shall complete Section II, providing on the appropriate line the name of the agent representing the buyer and the name of the agent representing the seller. The licensee shall also provide on the appropriate line the name of the real estate brokerage company whose principal broker and manager or managers shall be the dual agents in the designated-agency transaction. The licensee shall then present the appropriate Agency Disclosure Statement to the buyer and seller for their signatures, which shall be provided in the "Consent" section, appearing at the bottom of the Agency Disclosure Statement.

2. If the real estate transaction involves dual agency, the licensee shall complete Section II, providing on the appropriate line the name of both agents involved in the transaction. If an agent has any business, family, or personal relationship with the other party, then the agent shall explain the nature of the relationship or relationships in the space provided for that information. The licensee shall then present the appropriate Agency Disclosure Statement to the buyer and seller for their signatures, which shall be provided in the "Consent" section, appearing at the bottom of the Agency Disclosure Statement.

(c) If the real estate transaction involves only one (1) agent, the licensee shall complete Section III, providing on the appropriate line the licensed's name and the name of the real estate brokerage company involved in the transaction.

1. [a] If the agent will be representing both the buyer and the seller in the transaction, the licensee shall acknowledge that by marking the first box in Section III, which states that the agent will be a dual agent. If the agent has any business, family, or personal relationship with either the buyer or seller in the transaction, then the agent shall explain the nature of the relationship or relationships in the space provided for that information. The licensee shall then present the appropriate Agency Disclosure Statement to the buyer and seller for their signatures, which shall be provided in the "Consent" section, appearing at the bottom of the Agency Disclosure Statement.

2. [b] If the agent will be representing only one (1) of the parties, and none of the parties in the real estate transaction, then the licensee shall acknowledge that by marking the second box in Section III. The licensee shall present the appropriate Agency Disclosure Statement to the buyer and seller for their signatures, which shall be provided in the "Consent" section, appearing at the bottom of the Agency Disclosure Statement.

Section 4. Incorporation By Reference. (1) The following material is incorporated by reference:

(a) "Consumer Guide To Agency Relationships for Companies That Allow Only Dual Agency (No Designated Agency) - Model Policy", March 2006.
(c) "Agency Disclosure Statement - Buyer", March 2006.
(d) "Agency Disclosure Statement - Seller", March 2006 [Agency Information and Disclosure Form]. (February, 2001) is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, sub-
If the Real Estate Commission receives an [Federal-Bureau-of-Investigation] Identification record which reveals a felony conviction, or a misdemeanor conviction within the previous five (5) years, the Real Estate Commission shall investigate the conviction and, at its discretion, investigate any charges that are revealed by the [Federal-Bureau-of-Investigation] Identification record or any other evidence of dishonesty, untruthfulness, or bad reputation of the applicant.

Following the completion of the investigation, the Real Estate Commission shall review the investigation report and the [Real Estate Commission] shall:

(a) Order the applicant to appear before the commission for a hearing pursuant to KRS 324.045 and Chapter 138; or

(b) Allow the applicant to proceed with the licensure application without a hearing if the Real Estate Commission determines the conviction does not necessitate a hearing pursuant to KRS 324.045.

(4) If a hearing is ordered under subsection (3)(a) of this section, the applicant shall appear before the Real Estate Commission or the Real Estate Commission's authorized representative pursuant to KRS Chapter 138.

(b) The hearing shall determine whether the applicant meets the standards of KRS 324.045 and shall consider:

1. The nature of the crime;
2. Whether the crime indicates the applicant's untrustworthiness or incompetence in a manner that threatens the public interest;
3. Any evidence of honesty, truthfulness, and good reputation of the applicant;
4. Evidence of rehabilitation by the applicant since the crime;
5. Whether the applicant has received written confirmation from a principal broker willing to accept the applicant as an associate upon licensure;
6. Whether the applicant is currently under probation, parole, or other state supervision or reporting requirements as a condition of any criminal sentence; and
7. Other information relevant to the applicant's fitness to broker real estate.

(5) If an authorized representative conducts the hearing, the authorized representative shall recommend to the Real Estate Commission whether the applicant meets the standards of KRS 324.045. The Real Estate Commission may accept the recommendation, reject the recommendation and enter a separate order, or remand the application for further proceedings in accordance with KRS Chapter 138.

(6)(a) Following the hearing, the Real Estate Commission shall either approve or deny the application and notify the applicant of its decision along with a brief, written explanation of the reasons for its decision.

(b) The applicant may proceed with the licensure application if the Real Estate Commission states in its order that the applicant may proceed with the licensure application.

3 If the applicant is allowed to proceed with the licensure application, the Real Estate Commission's order shall provide an expiration date by which the applicant shall take the licensure examination.

4. If the Real Estate Commission denies the application, the Real Estate Commission shall indicate in its order, if and when, the applicant will be eligible to submit a subsequent licensure application.

(b) If the Real Estate Commission's order indicates the applicant may proceed with the licensure application, the applicant shall submit a copy of the order to the Real Estate Commission with the licensure application.

(c) Failure to produce the order shall constitute grounds to deny the licensure application.

(d) The application of an applicant who is, at the time of filing, under probation, parole, or other state supervision or reporting requirements ordered by any court of the Commonwealth may be denied by the commission, at its discretion. If the commission denies an application based upon one or more of these grounds, the applicant may reapply for licensure after the period of probation, parole, or other state supervision or reporting requirements has ended.
FINANCE AND ADMINISTRATION CABINET
Board of Licensure for Private Investigators
(As Amended at ARRS, August 8, 2006)

201 KAR 41:020. Application for licensure.

RELATES TO: KRS 329A.035, 329A.040(1)
STATUTORY AUTHORITY: KRS 329A.035, 329A.040(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025 requires the Kentucky State Board of Licensure for Private Investigators to evaluate the qualifications of candidates for licensure as private investigators and private investigating companies. KRS 329A.035 establishes application requirements for private investigators and private investigation companies. This administrative regulation establishes the application requirements and process for licensure.

Section 1. Application for Individual Private Investigator License. (1) A person who has met the qualifications established in KRS 329A.035 may submit the "Private Investigator Application and Applicant Instructions".

(2) With his application, the applicant shall submit:
(a) The initial application fee set forth in 201 KAR 41:040, which is nonrefundable;
(b) Two (2) 2" x 2" in. identification photos;
(c) A check or money order made payable to the "Kentucky State Treasurer" in the amount of thirty-four (34) dollars for the criminal background check and fingerprint fee; and
(d) A written request for release of medical, psychological, and other records pursuant to the requirements of KRS 329A.035(2)(e)(i).

Section 2. Application for Company Private Investigator License. (1) Owners, partners, or qualifying agents of companies who have met the qualifications established in KRS 329A.035 may submit the "Private Investigator Company Application and Applicant Instructions.".

(2) With the company application, the applicant shall submit:
(a) The initial application fee set forth in 201 KAR 41:040, which is nonrefundable; and
(b) A check or money order made payable to the "Kentucky State Treasurer" in the amount of thirty-four (34) dollars for the criminal background check and fingerprint fee.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Private Investigator Application and Applicant Instructions", 08/2006 edition; and
(b) "Private Investigator Company Application and Applicant Instructions", 08/2006 edition.

201 KAR 41:060. Renewal and reinstatement procedures.

RELATES TO: KRS 329A.025(3)(e), 329A.045(1)-(3), (8)
STATUTORY AUTHORITY: KRS 329A.025(2)(a), 329A.045(4), (6), (8), (11)
NECESSITY, FUNCTION AND CONFORMITY: KRS 329A.025(3)(e) states that the board may renew licenses. KRS 329A.025(3)(e) authorizes the board to implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. This administrative regulation provides directions for the biennial renewal of these licenses.

Section 1. An individual private investigator license may be renewed upon:
(1) Payment of the biennial renewal fee set forth in 201 KAR 41:040, Section 4(1); and
(2) Submission of completed "License Renewal Form" with the following written information to the board:
(a) Documentation of completion of continuing professional education requirements during the licensure renewal period established in 201 KAR 41:070.
(b) Written confirmation that, since the license was issued or renewed, the licensee has not:
1. Been convicted of a felony;
2. Had his license disciplined and is not currently under disciplinary review in Kentucky or another state; or
3. Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) per KRS 164.772 or on the repayment obligation of financial aid programs administered by any other state or federal agency; and
(c) Documentation of proof of continuous insurance coverage for the entire licensure period. Copies of the certificate of liability insurance shall be submitted along with the renewal application.

Section 2. A license convicted of a felony or disciplined in the interim period between issuance and renewal of the license, or between renewal periods, shall submit notice of conviction or discipline along with a written explanation to the board prior to license renewal.

Section 3. If payment and complete information are not received by the board on or before September 1 of the renewal year, the license shall terminate and the person shall not work as a private investigator in Kentucky.
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Section 4. [When a license terminates, the person has a duty to refrain from the practice of private investigation until such time as the license is reissued.]

Section 5[6] Company License Renewal. Private investigation companies who want to renew their licenses shall submit a completed "License Renewal Form" and comply with the provisions of KRS 329A.045(5). Section 5[6] A terminated license shall be reinstated, if the applicant submits:
(1) A completed "Application for Reinstatement of License" form within five (5) years of the termination date;
(2) (a) Submit evidence of receiving twelve (12) hours of continuing education within the two (2) year period immediately preceding the date that reinstatement is requested; or
(b) Obtain six (6) hours of continuing education within the first six (6) months of reinstatement of licensure. Failure to obtain six (6) hours within six (6) months shall result in termination of licensure. This requirement is in addition to the continuing education requirements for licensure renewal set forth in 201 KAR 41:070; and
(3) Payment of renewal and reinstatement fees set forth in 201 KAR 41:040.

Section 6[7] A license previously revoked as a disciplinary action shall be considered for reinstatement as follows:
(1) An applicant for reinstatement shall:
(a) Submit to the board fifteen (15) days prior to the next scheduled meeting, a letter:
   1. Requesting reinstatement; and
   2. Specifying the manner in which the applicant for reinstatement has complied with the terms of a disciplinary order of the board, if applicable; and
   3. Stating the reasons why the board should reinstate the private investigator.
(b) Meet the requirements set forth in Section 5[4](2) of this administrative regulation;
(c) Payment of renewal and reinstatement fees set forth in 201 KAR 41:040.
(2) Upon receipt of an "Application for Reinstatement of License", the board shall:
(a) Review the request for reinstatement and the Final Order; and
(b) Affirm or deny the request; or
(c) State in writing the corrective or remedial education, training, or review required before reinstatement shall be granted.
(3) The board shall not consider a request for reinstatement submitted to the board prior to the end of a revocation period.

Section 7[8] An applicant whose request for reinstatement is denied may file a written request for a hearing before the board within thirty (30) days of the letter denying reinstatement. A hearing held pursuant to the provisions of this section shall be conducted in accordance with KRS Chapter 13B.

Section 8[9] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "License Renewal Form", (2006 Edition); and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky Board of Licensure for Private Investigators executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 329A.

NEIL J. ALIOTI, Chair

R.B. RUDOLPH JR., Secretary
APPROVED BY AGENCY: May 12, 2006
FILED WITH LRC: May 15, 2008 at noon
CONTACT PERSON: John Parish, Director, Board of Licensure of Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 224, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Board of Licensure for Private Investigators
(As Amended at ARRS, August 8, 2006)

201 KAR 41:070 Continuing professional education requirements.

RELATES TO: KRS 329A.025(3)(e), KRS 329A.045(11)
STATUTORY AUTHORITY: KRS 329A.025(2)(a), 329A.045(11)

NECESSITY, FUNCTION AND CONFORMITY: KRS 329A.025(3)(e) states that the board may renew licenses and require continuing professional education as a condition for renewal. KRS 329A.025(2)(a) authorizes the board to implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Approved" means recognized by the Kentucky Board of Licensure for Private Investigators.
(2) "Continuing education hour* means fifty (50) clock minutes of participating in a continuing professional education experience.
(3) "Program* means an organized learning experience:
(a) Planned and evaluated to meet behavioral objectives; and
(b) Presented in one (1) session or in a series.
(4) "Provider* means an organization approved by the Kentucky Board of Licensure for Private Investigators for providing continuing professional education programs.

Section 2. Accrual of Continuing Education Hours: Computation of Accrual. (1) A minimum of twelve (12) continuing education hours shall be accrued by each person holding licensure during the two (2) year licensure period for renewal. Six (6) hours shall be acquired each year of the licensure period.
(2) All hours shall be in or related to the field of private investigation.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of a licensed private investigator. They may be earned by completing any of the following educational activities:
(1) Programs not requiring board review and approval. A program provided or approved or sponsored by any of the following providers, who submit prior application to the board, shall be deemed to be relevant to the practice of private investigation and shall be approved without further review by the board:
(a) Kentucky Private Investigators Association (KPIA);
(b) Kentucky Society of Professional Investigators (KSPI);
(c) Association of Certified Fraud Examiners;
(d) Association One;
(e) National Fire/Arson Certification Associations; and
(f) State and local bar associations.
(2) A general education course, elective or designated to meet undergraduate degree requirements, shall be acceptable for continuing education credit if the board determines it to be relevant. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling twelve (12) continuing education hours.
(3) Programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board and determined whether it complies with the requirements of Section 4(2) of this administrative regulation:
(a) A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (1) of this section;

(b) A program or academic course presented by the licensee. A presenter of a relevant program or academic course shall earn two (2) continuing education hours for each contact hour of instruction. Credit shall not be issued for repeated instruction of the same course;

(c) A relevant publication in a professionally recognized or juried publication. Continuing education hours shall be granted for relevant publications as follows:

1. Five (5) continuing education hours for each published abstract or book review;
2. Ten (10) continuing education hours for each published article;
3. Twenty (20) continuing education hours for each book chapter or monograph; and
4. Forty (40) continuing education hours for each published book.

Section 4. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) An applicant seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 5 of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the board determines the activity:

(a) Is an organized program of learning;
(b) Pertains to subject matter relating to private investigation;
(c) Enhances the professional competence of the licensee by:
   1. Refreshing his knowledge and skills; or
   2. Educating on a new topic or subject; and
(d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensures or certification, or professionally-recognized experience.

Section 5. Procedures for Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is secured from the board.

(2) The following information shall be submitted for board review of such program:

(a) A published course or seminar description;
(b) The name and qualifications of the instructor;
(c) A copy of the program agenda indicating hours of education, coffee and lunch breaks;
(d) Number of continuing education hours requested;
(e) Official certificate of completion or college transcript from the sponsoring agency or college;
(f) Application for continuing education credits approval; and
(g) Approval will be for one (1) year from date of approval unless substantial course changes occur. For purposes of this section, substantial changes means a change in the curriculum in excess of twenty (20) percent.

Section 6. Responsibilities and Reporting Requirements of Licensees. (1) During the certification renewal period, the board shall require up to fifteen (15) percent of all licensees to furnish documentation of the completion of the appropriate number of continuing education hours. All copies of documentation submitted to the board shall be returned to the licensee upon completion of the audit process via regular U.S. mail, first class, postage prepaid. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A licensee shall:

(a) Be responsible for obtaining required continuing education hours;
(b) Identify his continuing education needs and seek activities that meet those needs;
(c) Seek ways to integrate new knowledge, skills, and activities;
(d) Select approved activities by which to earn continuing education hours;
(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3(2) of this administrative regulation;
(f) Document attendance, participation in, and successful completion of continuing education activity; and
(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.

(3) The following items may be used to document continuing education activity:

(a) Transcript;
(b) Certificate;
(c) Affidavit signed by the instructor;
(d) Receipt for the fee paid to the sponsor; or
(e) Written summary of experiences that are not formally or officially documented otherwise.

(4) Comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS Chapter 329A and shall result in:

(a) Refusal to renew licensure;
(b) Suspension of licensure; or
(c) Revocation of licensure.

Section 7. Carry-over of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those required under Section 2 of this administrative regulation shall not be carried over into the immediately following licensure renewal period.

Section 8. Board to Approve Continuing Education Hours. Appeal of Denial. (1) If an application for approval of continuing education hours is denied, the licensee shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;
(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and
(c) Conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extensions of Continuing Education. (1) An application, the board may grant a waiver or extension of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;
(b) Illness of the licensee or an immediate family member;
(c) Death or serious injury of an immediate family member; or
(d) Active military duty.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the licensee; and
(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement of licensure shall:

(a) Submit evidence of receiving twelve (12) hours of continuing education within the two (2) year period immediately preceding the date that reinstatement is requested; or
(b) Obtain six (6) hours of continuing education within the first six (6) months of reinstatement of licensure. Failure to obtain six (6) hours within six (6) months shall result in termination of licensure. This requirement is in addition to the continuing education requirements for licensure renewal set forth in Section 2 of this administrative regulation above.

(2) The continuing education hours received in compliance with
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this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 11. The requirements of this administrative regulation shall [not] go into effect for [until] the 2008 licensure renewal cycle. All private investigators licensed by December 2006 shall be required to provide proof of continuing education for the 2008 renewal cycle. Proof of continuing education shall be required for all licensure cycles beginning in [the-year] 2008.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Approval for Providers to Offer Continuing Education", (2006 Edition); and
(b) "Licensee Application for Approval of Continuing Education", (2006 Edition).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky Board of Licensure for Private Investigators executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the board’s minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 329A.

NEIL J. ALJOTO, Chair
R.B. RUDOLPH, J.R., Secretary
APPROVED BY AGENCY: May 12, 2006
FILED WITH LRC: May 12, 2006 at 3 p.m.
CONTACT PERSON: John Parish, Director, Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 224, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Board of Licensure for Private Investigators
(As Amended at ARRS, August 8, 2006)

201 KAR 41:080. Complaint procedure.

RELATES TO: KRS 329A.025(3)(g), (l)-(k), 329A.040(2)(a), 329A.060(2), (3)

STATUTORY AUTHORITY: KRS 329A.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.060(1) states that the board shall promulgate administrative regulations regarding the receiving and Investigating of complaints. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) "Chair" means the chairman or vice-chairman of the board.
(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 329A, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.
(3) "Complaint" means any written allegation of misconduct by a licensed individual or other person which might constitute a violation of KRS Chapter 329A, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.
(4) "Complaint screening committee" means a committee consisting of up to two (2) members of the board appointed by the chair to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. In addition to board members, the Executive Director of the Division of Occupations and Professions or another staff member may be appointed to assist the committee, but shall not have voting privileges.
(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.
(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.
(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the attorney general or the board.

Section 2. Receipt of Complaints. (1) A complaint:
(a) May be submitted by an:
  1. Individual;
  2. Organization; or
  3. Entity.
(b) Shall be:
  1. In writing; and
  2. Signed by the person offering the complaint.
(c) May be filed by the board based upon information in its possession.
(2) Upon receipt of a complaint:
(a) A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual’s response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.
(b) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant. The complainant shall have seven (7) days from receipt to submit a written reply to the response.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual’s response, the complaint screening committee shall consider the individual’s response, complainant’s reply to the response, and any other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.
(2) If the board determines before formal investigation that a complaint is without merit, it shall:
(a) Dismiss the complaint; and
(b) Notify the complainant and respondent of the board’s decision.
(3) If the board determines that a complaint warrants a formal investigation, it shall:
(a) Authorize an investigator into the matter; and
(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The complaint screening committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS Chapter 329A or the administrative regulations promulgated thereunder and a complaint should be filed.
(2) If the board determines that a complaint does not warrant the issuance of a formal complaint, it shall:
(a) Dismiss the complaint; and
(b) Notify the complainant and respondent of the board’s decision.
(3) In the case of a nonserious violation, the board shall follow the procedure established in KRS 329A.060(3). (If the board determines that a violation has occurred but is not serious, the board may issue a written admonishment to the licensee. A copy of the written admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response in writing to the admonishment within thirty (30) days of its.
receipt and may have it placed in his permanent file. Alternatively, the licensee may file a request for a hearing with the board within thirty (30) days of the admonishment. Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(4) If the board determines that a complaint warrants the issuance of a formal complaint against the respondent, counsel for the board, in conjunction with the complaint screening committee, shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the individual as required by KRS Chapter 13B. The formal complaint shall be processed in accordance with KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 329A.015, it shall:
(a) Order the individual to cease and desist from further violations of KRS 329A.015; or
(b) Initiate action in [Franklin] circuit court pursuant to KRS 329A.025(3)(l) for injunctive relief to stop the violation of KRS 329A.015.

Section 5. Settlement by Informal Proceedings. (1) The board through counsel and the complaint screening committee may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chair.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Notice of Service of Process. A notice required by KRS Chapter 303 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.


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

This is to certify that the Chair of the Kentucky Board of Licensure for Private Investigators executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 329A.

NEIL J. ALIOTO, Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: May 12, 2006
FILED WITH LRC: May 12, 2006 at 3 p.m.
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GENERAL GOVERNMENT CABINET
Board of Licensure for Private Investigators
(As Amended at ARRS, August 8, 2006)

201 KAR 41:090. Code of ethics.

RELATES TO: KRS 329A.025(2)(d)
STATUTORY AUTHORITY: KRS 329A.025(2)(d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025(2)(d) requires the board to promulgate administrative regulations establishing a code of professional practice and conduct for private investigator licensees. This administrative regulation establishes the code of professional practice and conduct for private investigators.

Section 1. Proper Conduct of Practice. (1) The licensee shall at all times recognize the primary obligation to protect the health, safety, and welfare of the public in the performance of the licensee's professional duties.

(2) A licensee possessing knowledge of a violation, by another licensee of KRS Chapter 329A or any administrative regulation promulgated thereunder, shall report that violation to the board in writing and shall cooperate with the board in furnishing any information or assistance as the board [A licensee possessing knowledge of a violation of KRS Chapter 329A or any rule promulgated thereunder, should report such knowledge to the Kentucky Board of Licensure for Private Investigators. In writing—should cooperate with the board in furnishing such further information or assistance ...] may require.

(3) If the licensee becomes aware of a decision taken by an employer or client, against the licensee's advice, which violates applicable federal, state, or local laws and regulations or which may affect adversely the health, safety, or welfare of the public, the licensee shall:
(a) Refuse to consent to the decision; and
(b) In circumstances where the licensee reasonably believes that other [such] decisions will be made [taken], notwithstanding the licensee's objections, terminate services with reference to that employer or client.

Section 2. The Code of Ethics. A private investigator shall:

(1) Adhere to the guidelines, policies, and procedures of the Kentucky Private Investigators Act in KRS Chapter 329A and the administrative regulations contained in 201 KAR 41.

(2) Practice with honesty, sincerity, integrity, fidelity, morality, and good conscience in all dealings with clients, other investigators, as well as other professions.

(a) The licensee shall perform his duties in accordance with all local, state, and federal laws, as well as adhere to the highest moral principles of the profession.

(b) The licensee shall not engage in prohibited acts as set forth in KRS 329A.055.

(3) Provide only those services for which the licensee is qualified to perform.

(a) [Services for which they are qualified to perform.] The licensee shall not fail to or permit misrepresentation of his or his associates' academic or professional qualifications.

(b) The licensee [He] shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments.

(c) Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employment, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work.

(3) All advertising shall be truthful, not misleading.

(4) Not accept any assignment that creates a personal or business conflict of interest. Regarding conflicts of interest:
[Refers to accepting assignments which would be a personal or business conflict of interest.]

(a) The licensee shall not accept compensation, financial or otherwise, from more than one (1) party for services on or relating to the same investigation, set of circumstances, court case, or issues, unless all interested parties consent in writing after full disclosure by the licensee; [•]

(b) The licenses shall avoid all known conflicts of interest with his employer or client and shall promptly inform his employer or client of any business association, interest, or circumstances which could influence his judgment or the quality of his services. When a conflict becomes apparent, the licensee shall disclose the circumstances to the licensee's employer and client. [When such a conflict is unavoidable, the licensee shall forthwith disclose the circumstances to his employer or client.]

(c) The licensee shall take reasonable steps to ascertain the existence of potential conflicts of interests among his employers and/or clients. A conflict exists when a private investigator, because of some personal interest, finds it difficult to devote himself
with loyalty and singleness of purpose to the best interest of his client or employer.

(d) A private investigations company shall be responsible for avoiding conflicts of interest between:

1. The company and the clients of any private investigator(s) affiliated with the company;

2. The clients of one (1) private investigator affiliated with the company and the clients of any other private investigator(s) affiliated with the company.

(e) A [Ne] licensee or employee of a licensee shall not contact or cause to be contacted any individual under investigation for the purpose of revealing confidential information to that individual. Any [such] contact with a subject being investigated, whether intentional or unintentional, shall be made a part of the investigative file of such case.

(f) The licensee shall ensure that all clients are dealt with justly and impartially regardless of social, political, racial, ethnic, or religious considerations, economic status, or physical characteristics.

(5) Preserve client confidentiality under any and all circumstances unless required otherwise by law.

(a) The licensee shall safeguard information and exercise due diligence to prevent improper disclosure of that information.

(b) Any license or registered employee may divulge to any law enforcement officer or prosecuting attorney or his representative, any information the licensee [he] may acquire as to any criminal offense, but he shall not divulge to any other person, except as the licensee [he] may be required by law so to do, any information acquired by the licensee [him], except at the direction of the employer or client for whom the information was obtained.

(c) A [Ne] licensee or any employee of a licensee, shall not knowingly make any false report to his employer or client for whom information was being obtained.

(d) Client confidentiality shall not:

1. Affect any way the licensee's obligation to comply with a validly issued and enforceable subpoena or summons;

2. (a) Prevent a licensee or any employee of a licensee from practicing before the Kentucky Board of Licensure for Private Investigators; or

3. (c) Prohibit a licensee from utilizing any such relevant information in the defense of a claim asserted against a licensee.

(5) Make all reporting based upon truth and fact and shall express honest opinions on that basis.

(a) Upon the request of a client in good standing, a licensee shall [must] submit a written report to that client or his designated.

(b) A written report shall include all relevant information obtained during the investigation.

(7) Explain to the full satisfaction of all clients any fees and charges associated with his or her [their] case.

(a) The licensee shall not bill a client for services or expenses which are not provided or incurred.

(b) A complete and comprehensive itemized statement of services and expenses shall [must] be provided to the client upon request.

(c) Make certain that [Ensure] any obligations and responsibilities in contracts and mutual agreements shall [should] be met in a timely manner, and the principle of appropriate and adequate compensation for those engaged in investigative work shall not [should never] be abused.

(9) Assist when necessary, law enforcement officers and all other duly-constituted authorities.

(10) Ensure that the licensee's [his] conduct does not bring discredit to the investigative profession. A licensee may be deemed by the board to be guilty of misconduct in his professional practice if:

(a) He is convicted in a court of competent jurisdiction of a felony or misdemeanor which the board finds reflects unfavorably on the licensee's fitness for licensure; or

(b) His license or certificate of registration to practice private investigators in another jurisdiction is revoked, suspended, or voluntarily surrendered as a result of disciplinary proceedings.

(11) Refrain from maliciously injuring the professional reputation or practice of colleagues.

This is to certify that the Chair of the Kentucky Board of Licen-
ground portions of a UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(7) [46] "Beneath the surface of the ground" means, for purposes of identifying an underground storage tank system as set forth in KRS 224.60-100, beneath the ground surface or otherwise covered with earth or materials.

(8) [46] "Body injury and property damage" is defined by KRS 224.60-115(1).

(9) [46] "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a UST system can be cathodically protected through the application of either galvanic anodes or impressed current.

(10) [46] "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems.

(11) [46] "Certified company" means a person certified pursuant to 401 KAR 42:316.

(12) [46] "Certified contractor" means a person certified pursuant to 401 KAR 42:314.

(13) [46] "Change in service" means continued use of a UST system that previously stored a regulated substance to store a nonregulated substance.

(14) [46] "Claim" is defined by KRS 224.60-115(3).

(15) [46] "Compatible" means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST system.

(16) [46] "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two (2) UST systems shall be allocated equally between them.

(17) [46] "Consumptive use" means, with respect to heating oil, consumed or withdrawn from the tank for the purpose of diluting or cleaning off the tank to be re-used.

(18) [46] "Contamination" means degradation in the quality of surface water, sediment, groundwater, air, soil, or bedrock as a result of human activities.

(19) [46] "Contract" means the legally-binding written agreement for performance of corrective action entered into by an owner or operator and a contracting company certified pursuant to 401 KAR 42:316.

(20) [46] "Corrective action".


(b) [46] For purposes of 401 KAR 42:011, 42:020, 42:030, 42:050, 42:060, 42:070, 42:080, 42:200, and 42:260, means any action necessary to protect humans health and the environment if there is the event of a UST system release. Corrective action may include remedial actions to clean up contaminated groundwater, surface waters or soils, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action may also include actions necessary to monitor, assess, and evaluate a UST system release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a UST system release has occurred. [These actions necessary to protect human health and the environment in the event of a release from a UST system.

(21) [46] "Corrective action agreement" means a written agreement for reimbursement between the cabinet, the owner or operator, and the certified contractor, which applies to corrective action or interim action to be performed.

(22) [46] "Corrosion expert" means a person accredited or certified as being a corrosion expert by the National Association of Corrosion Engineers (NACE International), or a professional engineer registered by the Kentucky State Board of Registration for Professional Engineers and Land Surveyors with certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(23) [46] "Dielectric material" means a material that does not conduct direct electrical current.

(24) [46] "Dilution" is defined by KRS 224.60-115(6).

(25) [46] "Domestic-use well, spring, cistern, or well head protection area" means a well, spring, cistern, or well head protection area currently used or potentially used by humans for personal, commercial, or agricultural purposes.

(26) [46] "Electrical equipment" means underground equipment containing dielectric fluid used for the operation of equipment such as transformers and buried electrical cable.

(27) [46] "Empty" means all regulated substances have been removed from the UST system using commonly employed practices so that no more than two and five-tenths (2.5) centimeters (one inch) of residue, or three-tenths (0.3) percent by weight of the total capacity of the UST system, remain in the system.

(28) [46] "Entry level" means an amount equal to the financial responsibility the owner or operator shall establish and maintain in accordance with KRS 224.60-120.

(29) [46] "Environmentally sensitive feature" means surface waters and wetland areas. The term shall not include road-side ditches or manmade drainage ways that do not discharge to surface waters or wetland areas within a fifty (50) meter radius of the excavation zone.

(30) [46] "EPA identification number" means the number assigned by the U.S. EPA or the cabinet to each hazardous waste generator, transporter, and treatment, storage, or disposal facility.

(31) [46] "Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(32) [46] "Existing system" means a UST system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if: (a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the UST facility [site] or installation of the UST system; and (b) A continuous, physical barrier [control] or construction or installation program has begun at the UST facility; or 2. The owner or operator has entered into contractual obligations, that cannot be canceled or modified without substantial loss, for physical construction at the UST facility [site] or installation of the UST system to be completed within a reasonable time.

(33) [46] "Facility" is defined by KRS 224.60-115(7). [or [site] means the property on which the UST system is located.

(34) [46] "Farm tank" means a tank located on a tract of land devoted to the production of crops (including nurseries) or raising animals (including fish hatcheries) and associated residences and improvements.

(35) [46] "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government, including any government corporation, and the U.S. Government Printing Office.

(36) [46] "Federal regulations" is defined by KRS 224.60-115(8).

(37) "Financial ability" means the capacity of a petroleum storage tank owner or operator to finance the performance of corrective action.

(38) [46] "Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(39) [46] "Free product" is defined by KRS 224.60-115(9). [KRS 224.60-115(9).

(40) [46] "Guarantor" is defined by KRS 224.60-120(4).
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(41) [(389) "Gathering lines" means pipelines, equipment, facilities, and buildings used in the transportation of oil or gas during oil or gas production or gathering operations.

(42) [(390) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(43) [(391) "Hazardous substance UST system" means a UST system that:

(a) contains a hazardous substance identified in Section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under 401 KAR Chapters 31 through 39), or contains a mixture of this type of hazardous substance and petroleum; and

(b) is not a petroleum UST system.

(44) [(392) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grade fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels if used as substitutes for one (1) of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(45) [(393) "Heating tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(46) [(394) "Hydrogeologically downgradient" means in the direction from a point of higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a higher water table elevation exists to a point where a lower water table elevation exists, as defined by wells or piezometers.

(47) [(395) "Hydrogeologically upgradient" means in the direction from a point of lower hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a lower water table elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

(48) [(396) "Leak-detection system" means a method of monthly monitoring capable of detecting a failure in a UST system of either the primary or secondary containment system, or capable of detecting the presence of a UST system release of a regulated substance outside the UST system.

(49) [(397) "Liquid trap" means a sump, well cellar, or other trap used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids.

(50) [(398) "Maintenance" means the normal operational upkeep to prevent a UST system from releasing a regulated substance.

(51) [(399) "Monitoring" means the act of systematically collecting and accessing data on operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or surface water.

(52) [(400) "Motor fuel" is defined by KRS 224.60-115(12) [KRS 224.60-145(14)].

(53) [(401) "Net worth" is defined by KRS 224.60-120(3).

(54) [(402) "Newly discovered UST system" means a UST system at a UST facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence.

(55) [(403) "New UST system" means a UST system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.

(56) [(404) "Noncommercial purposes" means, with respect to motor fuel, not for resale.

(57) [(405) "Occurrence" is defined by KRS 224.60-115(13).

(58) [(406) "Off-site" (43) "Off-site" means any area beyond the Point of compliance, [properly other than the underground storage tank facility].

(59) [(407) "On the premises where stored" means, with respect to heating oil, UST systems located on the same property where the stored heating oil is used.

(60) [(408) "Operator" means the storage and dispensing of a regulated substance from a UST system.

(61) [(409) "Operational life" means the period beginning when installation of the UST system has commenced and ending when the UST system is closed under 401 KAR 42.070 or 401 KAR 42.071.

(62) [(410) "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

(63) [(411) "Original invoice" means an original or duplicate copy of an itemized list of all products or services obtained, including the itemized cost thereof, with an account of all costs, provided to the contractor by or owner or operator by the person supplying the products or providing the services.

(64) [(412) "Overall release" means a UST system release that occurs if a UST system is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(65) [(413) "Owner" means:

(a) if in-the-ease-of a UST system in use on November 8, 1964, or brought into use after that date, any person who owns a UST system used for storage, use, or dispensing of a regulated substance; and

(b) if in-the-ease-of any UST system in use before November 8, 1964, but no longer in use on that date, any person who owned the UST system immediately before the discontinuation of its use.

(66) [(414) "Permanent closure" means either removing the UST system from the ground or filling the UST system with an inert, solid material or a combination of both methods.

(67) [(415) "Permanently closed" means a UST system was:

(a) Closed prior to December 22, 1988 in accordance with the requirements of the Department of Fire Marshal. In accordance with applicable industry standards when closure occurred, and in a manner that prevents any future use of the UST system;

(b) Closed after December 22, 1988, but prior to December 19, 1990, in accordance with 40 C.F.R. 280.71 through 280.74;

(c) Closed after December 19, 1990, but prior to April 18, 1994, in accordance with administrative regulations in effect at the time; or

(d) Closed after April 18, 1994, but prior to January 1, 1996, in accordance with the emergency administrative regulations that took effect on February 15, 1994, or

(e) Closed after January 1, 1996 in accordance with 401 KAR 42.070 or 401 KAR 42.071 in effect at that time; or

(f) Closed in accordance with 401 KAR 42.070 after the effective date of the administrative regulation.

(68) [(416) "Person" is defined by KRS 224.60-115(14).

(69) [(417) "Petroleum" is defined by KRS 224 60-115(15).

(70) [(418) "Petroleum storage tank" is defined by KRS 224.60-115(16).

(71) [(419) "Petroleum storage tank operator" is defined by KRS 224.60-115(17).

(72) [(420) "Petroleum storage tank operator" is defined by KRS 224.60-115(18).

(73) [(421) "Petroleum storage tank system" means a UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. The term includes those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(74) [(422) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonmetallic materials (for example, concrete, steel, plastic, or a combination of these types of materials).

(75) [(423) "Pipe facilities" [including gathering lines] means new and existing pipe rights-of-way and any associated equipment, facilities, or buildings, including gathering lines.

(76) [(424) "Point of compliance" means the property boundaries of the property on which the UST facility is located.

(77) [(425) "Preestablished fixed cost" means the cost determined by the cabinet to be reimbursed from the Petroleum Storage Tank Environmental Assurance Fund for actions taken as a result of a written directive from the cabinet or corrective action agreement.

(78) [(426) "Ranking system" means the system for determining extent of environmental harm and financial ability, as established by 401 KAR 42-290.

(79) [(427) "Registration" or "register" shall have the same meaning as "notification" or "notice", as used in 40 C.F.R. Part 280 Subpart
B. (81) [68] "Regulated substance" is defined by KRS 224.60-100(2).
(82) [69] "Release" is defined by KRS 224.60-115(20), means any spilling, leaking, emitting, discharging, escaping, or disposing of a regulated substance into groundwater, surface water, surface or subsurface soil, or interstitial space between the UST system and its secondary barrier or secondary containment. The term shall not include spilling, leaking, emitting, discharging, escaping, or disposing that is permitted or authorized by Kentucky or federal law.
(83) [60] "Release detection" means a method of determining whether a UST system release of a regulated substance has occurred, from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment.
(84) [61] "Repair" means to restore a UST system component that has caused a release of a regulated substance from a UST system.
(85) [62] "Residential tank" means a tank located on property used primarily for dwelling purposes.
(86) [63] "Residual tank materials" means any accumulated tank water, bottom sediments, mixture of product and water, or other material remaining in a tank after removal of tank contents.
(87) [67] "Secretary" means the Secretary of the Environmental and Public Protection Cabinet.
(88) [64] "Septic tank" means a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from the receptacle is distributed for disposal through the soil, and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.
(89) [65] "Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment used to collect or transport the flow of surface water run-off resulting from precipitation of domestic, commercial, or industrial wastewater to or from retention areas or any areas where treatment is designated to occur.
(90) [66] "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials) that is not an injection well.
(91) [67] "Surface water" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection to the surface. Effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface water and thus not subject to the Commonwealth.
(92) [68] "Tank" means a stationary device designed to contain an accumulation of regulated substances and constructed of nonerasable materials (for example, concrete, steel, plastic, or a combination of these materials) that provide structural support.
(93) [69] "Tank contents" means any accumulated tank water, bottom sediments, or mixture of product and water that is removed from a tank at one (1) time by the same method and that is accepted by a recycling facility.
(94) [70] "Temporary closure" means taking a UST system out of operation pursuant to the requirements of 401 KAR 42.070; Section 3.
(95) [71] "Third party" is defined by KRS 224.60-115(22).
(96) [72] "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the UST system situated on or above the surface of the floor.
(97) [73] "Underground utility conduits" means any manmade underground conduit installed for utility purposes either on or off site.
(98) [74] "Upgrade" means the addition of or retrofitting of UST system components to improve the ability of a UST system to prevent a UST system [the release, for a regulated substance]. Examples of upgrades include the addition of cathodic protection, improvements to the interior lining, and improvements of spill and overfill controls.
(99) "UST facility" or "site" means, with respect to any owner or operator, all UST systems which are owned or operated by an owner or operator and are located on a single parcel of property or on any contiguous or adjacent property.
(100) [74] "UST system", "tank system", or "underground storage tank system" means an underground storage tank (as defined in KRS 224.60-100), connected underground piping, underground ancillary equipment, and containment system, if any.
(101) "UST system release" means any spilling, leaking, emitting, discharging, escaping, or disposing that is permitted or authorized by Kentucky or federal law.
(102) "UST system release detection" means method, that complies with the requirements of 401 KAR Chapter 42 shall have the meaning as identified in Table 1 of this administrative regulation.

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>CERCLA</td>
<td>Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended</td>
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<td>C.F.R.</td>
<td>Code of Federal Regulations</td>
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<td>DEP</td>
<td>Kentucky Department for Environmental Protection</td>
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<td>KAR</td>
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<td>U.S. EPA</td>
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<td>UST</td>
<td>Underground Storage Tank</td>
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JOHN W. CLAY, Deputy Secretary
For LAUJANA WILCHER, Secretary
APPROVED BY AGENCY: July 12, 2006
FILED WITH LRC: July 13, 2006 at 4 p.m.
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 8, 2006)


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public [Natural Resources and Environmental Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 (9) requires the cabinet to regulate underground storage tank (UST) systems by requiring registration [registration], minimum construction and performance standards, leak detection, record-
keeping, release reporting, corrective action, closure, financial responsibility and other standards to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. 401 KAR Chapter 42 [This chapter] identifies requirements for UST systems. This administrative regulation establishes the scope of the cabinet's Underground Storage Tank Program, including provisions for exclusions, deferrals, and interim prohibitions.

Section 1. Application [Adoption] of Federal Regulations [Regulation]. The requirements for program applicability, interim prohibition requirements, and definitions for UST systems are governed by 40 C.F.R. Part 280 Subpart A and this administrative regulation.

Section 2. Applicability, Exclusions and Deferrals. The requirements of 401 KAR Chapter 42 [This chapter] apply to all owners and operators of UST systems, except as provided in subsections (1) and (2) of this section. Any UST system listed in subsection (2) of this section shall meet the requirements of Section 3 of this administrative regulation.
(1) Exclusions. The following UST systems are excluded from the requirements of 401 KAR Chapter 42 [This chapter]:
(a) UST systems containing wastes identified as hazardous in 401 KAR Chapter 31, and UST systems containing mixtures of hazardous waste and other regulated substances;
(b) Wastewater treatment tank systems that are part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.);
(c) Equipment and machinery containing regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks;
(d) UST systems having a capacity of 110 gallons or less;
(e) UST systems containing a de minimis concentration of regulated substances;
(f) Emergency spill or overflow containment UST systems that are emptied immediately after use; and
(g) UST systems excluded from the definition of "underground storage tank" provided in KRS 224.60-100.
(2) Deferrals. This subsection identifies UST systems that are deferred from compliance with some of the requirements of 401 KAR Chapter 42.
(a) 401 KAR 42:040 does not apply to UST systems that store fuel solely for use by emergency power generators.
(b) 401 KAR 42:020, 401 KAR 42:030, 401 KAR 42:040, and 401 KAR 42:050 do not apply to the following UST systems:
1. Wastewater treatment tank systems that are not part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.);
2. UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);
3. UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under Appendix A of 10 C.F.R. Part 50,
4. Airport hydrant fuel distribution systems; and
5. UST systems with field-constructed tanks.
(3) Dual-purpose UST System. [Systems] UST system [systems] used for dual purposes, one (1) of which is regulated, shall meet the requirements of 401 KAR Chapter 42.

(1) Except as provided in subsection (2) of this section, a person shall not install a UST system listed in Section 2(1)(2) of this administrative regulation for the purpose of storing regulated substances unless the system (whether of single- or double-wall construction):
(a) Will prevent UST system releases due to corrosion or structural failure for the operational life of the UST system;
(b) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent a UST system [the release of any stored substance]; and
(c) is constructed or lined with material that is compatible with the stored substance.
(2) (a) A UST system without corrosion protection may be installed at a UST facility [site] that is determined by a corrosion expert not to be corrosive enough to cause it to have a UST system release due to corrosion during its operating life.
(b) Owners and operators shall maintain records that demonstrate compliance with paragraph (a) of this subsection for the remaining life of the tank.
(3) The document incorporated by reference in Section 4 [3] of this administrative regulation shall be used in meeting the requirements of subsections (1) and (2) of this section.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Devonport Blvd., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) This material may also be obtained by calling the Division of Waste Management at (502) 564-5981 or on the Division's Web page located at www.waste.ky.gov. [The document referenced in] [subsection (1) of] [the section is available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch] [of the Division of Waste Management]; [81 C. Michael Devonport Blvd., Frankfort, Kentucky 40601 (502) 564-5981]; [14 Reily Road, Frankfort, Kentucky 40601, (502) 564-6716]. From 8 a.m. to 4:30 p.m. Monday through Friday, excluding state holidays and may also be obtained on the Division of Waste Management's Web page located at www.waste.ky.gov.

JOHN W. CLAY, Deputy Secretary
For LAJUANA WILCHER, Secretary
APPROVED BY AGENCY: July 12, 2006
FILED WITH LRC: July 13, 2006 at 4 p.m.
CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reily Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4048, email Bruce.Scott@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 8, 2006)

401 KAR 42:020. UST systems: design, construction, installation, and registration [Performance standards for new UST systems].

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart B, Part 281, 42 U.S.C. 6991c STATUTORY AUTHORITY. KRS 224.10-100, 224.60-105, 40 C.F.R. Part 280 Subpart B, Part 281, 42 U.S.C. 6991c NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public [Natural Resource and Environmental] Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105[(23)] requires the cabinet to regulate underground storage tank (UST) systems by requiring registration [notification], minimum construction and performance standards, leak detection, record-keeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. 401 KAR Chapter 42 [This chapter] identifies requirements for UST systems. This administrative regulation establishes requirements concerning performance standards, registration [notifi-

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Section 1. Application [Adoption] of Federal Regulations. (1) The requirements concerning performance standards, registration [notification], and alternatives for upgrading existing UST systems are governed by 40 C.F.R. Part 280, Subpart B and this administrative regulation [1464]).

(2) 40 C.F.R. 280.22(b) allows for state forms to be used in lieu of federal forms for registration [notification] of UST systems. The "UST Facility Registration Form", DEP 7112, (August [January 2006] [document] [incorporated by reference in Section 2 of this administrative regulation] shall be used in meeting the requirements of this administrative regulation, 40 C.F.R. 280 Subpart B and 401 KAR 42:200.

Section 2. New Registrations. The current owner of a UST system or UST systems shall notify the cabinet of the existence of the UST system or systems [system(s)] listed by completing the "UST Facility Registration Form", DEP 7112, (August [January 2006]). This form shall be submitted to the cabinet no later than thirty (30) days after the installation of the UST system or systems [system(s)] listed and shall be signed by the owner and operator of the UST system or systems [system(s)].

Section 3. Amended Registrations. (1) The owner or operator shall submit an amended "UST Facility Registration Form", DEP 7112, (August [January 2006]), that specifically indicates all amendments, within thirty (30) days of any change to the following items:

(a) Owner or operator of the UST system or systems [system(s)] listed;

(b) Description of the UST system or systems [system(s)] listed;

(c) Environmental responsibility;

(2) If an unregistered UST system or systems [system(s)] is discovered during permanent closure activities pursuant to KAR 42:070, an amended "UST Facility Registration Form", DEP 7112, (August [January 2006]), shall be submitted to the cabinet to register the newly discovered UST system.

Section 4. Changes of Ownership. (1) If ownership of a UST system changes, the new owner shall complete and submit an amended "UST Facility Registration Form", DEP 7112, (August [January 2006]), to indicate the new ownership. The form shall include the previously-assigned agency interest number and shall be submitted to the cabinet within thirty (30) days after the transaction.

(2) If an owner sells a UST system, the seller shall:

(a) Advise the new owner of the obligation to submit an amended "UST Facility Registration Form", DEP 7112, (August [January 2006]), to the cabinet that indicates the change in ownership; and

(b) Also, the seller shall: Submit to the cabinet, within thirty (30) days after the transaction, a copy of the property-executed deed or other mutually-executed legal document supporting the sale of the UST system, along with a letter indicating the UST facility name as registered with the cabinet, the UST facility location, and the agency interest number.

Section 5. Issuance of a Certificate of Registration and Reimbursement Eligibility. Upon a determination by the cabinet that the "UST Facility Registration Form", DEP 7112, (August [January 2006]), is complete and accurate, the cabinet shall issue a "Certificate of Registration and Reimbursement Eligibility", DEP 7113, (August [January 2006). Upon acceptance of the completed form, the cabinet shall assign an agency interest number and shall notify the owner, in writing, of the agency interest number.

Section 6. Interior Lining Inspection. (1) The interior lining of a UST system shall be inspected ten (10) years after installation of the UST system. Follow-up inspections shall occur on five (5) year intervals.

(2) The "Interior Lining Inspection Form", DEP 8050, (August [January 2006]) is incorporated by reference in Section 8 of this administrative regulation, shall be completed when an inspection is conducted and submitted to the cabinet within thirty (30) days of the inspection.

Section 7. Incorporation by Reference. (1) The following material [document] is hereby incorporated by reference:

(a) "UST Facility Registration Form", DEP 7112, (August [January 2006); and

(b) "Certificate of Registration and Reimbursement Eligibility", DEP 7113, (August [January 2006); and

(c) "Interior Lining Inspection Form", DEP 8050, (August [January 2006].

[The Division's web page located at www.waste.ky.gov may be checked for the most recent version of the 'Certificate of Registration and Reimbursement Eligibility'.]

JOHN W. CLAY, Deputy Secretary
For LAUANA WILCHER, Secretary
APPROVED BY AGENCY: July 12, 2006
FILED WITH LBC: July 13, 2006 at 4 p.m.
CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reily Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Bruce.Scott@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 8, 2006)

401 KAR 42:030. General operating requirements.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public (Natural-Resource-and Environmental) Protection Cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.60-105 (29) requires the cabinet to regulate underground storage tanks by requiring registration [notification], minimum construction and performance standards, leak detection, recordkeeping, reporting UST system releases, corrective actions, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program for federal requirements for underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. 401 KAR Chapter 42 [This chapter] identifies requirements for underground storage tanks. This administrative regulation establishes requirements for spill and overfill control, operation and maintenance of corrosion protection, compatibility, repairs, and reporting and recordkeeping.

Section 1. Application [Adoption] of Federal Regulations. (1) The requirements for spill and overfill control, operation and maintenance of corrosion protection, compatibility, repairs, reporting and recordkeeping for underground storage tanks are governed by 40 CFR Part 280, Subpart C and this administrative regulation.
Section 2. Catholic Protection System Evaluation. A person shall meet one (1) of the following qualifications: To test cathodic protection systems in the Commonwealth of Kentucky, a person shall:

1. Those individuals who meet the definition of "Cathodic protection tester" as defined by 401 KAR 42:005.
2. Those individuals who, at a minimum, be [tested] certified as a "Cathodic protection tester" by NACE International.
3. Those individuals who have completed corrosion protection tester training, which includes the following:
   a. Basics of corrosion;
   b. Underground corrosion;
   c. Corrosion prevention;
   d. Assessing physical conditions for corrosion potential;
   e. Review of EPA's regulatory requirements for corrosion protection systems;
   f. Hands on field experience in the testing of both impressed current and sacrificial anode systems, which includes:
      1. Using reference cells;
      2. Taking remote readings;
      3. How to read and understand a rectifier; and
      4. How to use a test station.
   g. Testing measurement - 850 criterion; and
   h. Typical and non-typical problems; and
   i. Review of standards and recommended practices from corrosion protection materials including, NACE, API, NFPA and ASTM.

Section 3. Actions Required as a Result of the Catholic Protection System Evaluation. (1) If the cathodic protection is adequate, the cathodic protection system shall be retested within three (3) years of the date of testing.
(2) If the cathodic protection system fails the evaluation, but the cathodic protection tester determines the failure may be attributable to adverse testing conditions and determines the system is otherwise in good working condition, then a retest may be performed within ninety (90) days of the failing evaluation. (3) Action to repair or modify the cathodic protection system shall not be required during the ninety (90) day retesting period. If the retest conducted within the ninety (90) day retesting period indicates a system failure, repairs or modifications shall (be) completed as soon as practicable, but no more than ninety (90) days after the expiration of the ninety (90) day retesting period.
(3) If the cathodic protection system fails the evaluation, and it does not qualify for the ninety (90) day retesting period in subsection (2) of this section, then repairs or modifications shall be completed as soon as practicable, but no more than ninety (90) days after the performance of the evaluation.
(4) A cathodic protection system evaluation shall be required within 180 days after the installment, repair, or modification of a cathodic protection system.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
   e. "60-Day Record of Rectifier Operation for Impressed Current Cathodic Protection System", DEP 8054, (January 2006).
   g. "60-Day Record of Rectifier Operation for Impressed Current Cathodic Protection System", DEP 8054, (January 2006).

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

Section 2. Extensions. The owner operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Groundwater Protection Branch of the Division of Waste Management prior to the deadline. The owner may grant extensions if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
Section 3. Extensions. With the exception of the reporting requirements in Section 2 of this administrative regulation, the owner or operator of a UST system may request an extension of the time frame for reports required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.
CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601 Phone (502) 564-6716, fax (502) 564-4049.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 8, 2006)

401 KAR 42:060. UST System release response and corrective action for UST systems containing petroleum or hazardous substances.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R. Part 280 Subpart F, Part 281, 42 U.S.C. 6991-6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 C.F.R. Part 280 Subpart F, Part 281, 42 U.S.C. 6991c

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public [Natural Resource and Environmental] Protection Cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.60-105(2)(d) requires the cabinet to regulate underground storage tanks by requiring registration [notification], minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. 401 KAR Chapter 42 [This chapter] identifies requirements for underground storage tanks. This administrative regulation establishes the requirements for reporting of suspected UST system releases, and investigation of off-site impacts.

Section 1. Application [Adoption] of Federal Regulations [Regulation]. The requirements for reporting of suspected UST system releases and investigation of off-site impacts for underground storage tank systems are governed by 40 C.F.R. Part 280 Subpart E and this administrative regulation (4490).

Section 2. Suspected UST System Release Reporting. A suspected UST system release shall be reported immediately to the Environmental Response Team at (800) 228-2380 or (502) 564-2380.
Section 2. Incorporation by Reference. (1) The following material is [as amended and hereby] incorporated by reference:
(e) "Site Investigation Checklist Form", DEP 8049, (August [January] 2006) [UST-Groundwater Sampling Analysis Form], DEP Form 2013 (September 8, 1996).

(2) This material may be inspected, copied, or obtained [with the documentation referenced in subsection (1) of this section are available for inspection and copying], subject to copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Blvd., Frankfort, Kentucky 40601, (606) 564-6681 [of the Division of Waste Management, 14 Rolly Road, Frankfort, Kentucky 40601, (606) 566-6714], from 8 a.m. to 4:30 p.m. (eastern time), Monday through Friday, 8 a.m. to 4:30 p.m. (excluding State holidays) and may also be obtained on the Division of Waste Management's Web page located at www.waste.ky.gov.

(3) This material may also be obtained by calling the Division of Waste Management at (502) 564-5981 or on the division's Web page located at www.waste.ky.gov.

[Section 3. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if warranted.]

JOHN W. CLAY, Deputy Secretary
For LAUANA S. WILCHER, Secretary
APPROVED BY AGENCY; July 12, 2006
FILED WITH LRC: July 13, 2006 at 4 p.m.
CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Rolly Road, Frankfort, Kentucky 40601, Phone (502) 564-6716, fax (502) 564-4049.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 8, 2006)


RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R. Part 280 Subpart G, Part 281, 42 U.S.C. 6901-6991c


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public [Natural Resources and Environmental] Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 [42] requires the cabinet to regulate underground storage tank (UST) systems by requiring registration [notification], minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. 401 KAR Chapter 42 [This chapter] identifies requirements for UST systems. This administrative regulation establishes the requirements for out-of-service UST systems, temporary and permanent closure of UST systems, and change in service of UST systems.

Section 1. Application (Adoption) of Federal Regulations (Regulation). The requirements for temporary closure, permanent closure, change-in-service, record keeping, and applicability to previously closed UST systems are governed by 40 C.F.R. Part 280 Subpart G and this administrative regulation.

Section 2. Applicability. (1) [es]: This administrative regulation shall apply to any owner or operator of a UST system that has a UST system release confirmed after the effective date of this administrative regulation (on or after January 1, 1995), or has submitted a Notice of Intent to Permanently Close Underground Storage Tank System (DEP 7114, [July 1995], DEP Form 5026) (exemplified by reference to Section 2 of this administrative regulation) that has been received by the cabinet's regional office after the effective date of this administrative regulation [Underground Storage Tank Branch of the Division of Waste Management on or after January 1, 1995].

(2) The owners and operators of a UST system who have, prior to the effective date of this administrative regulation, submitted a Notice of Intent to permanently close underground storage tank systems, or reported a confirmed release to the cabinet, shall comply with the closure requirements and corrective action requirements in existence at the time the notice of intent to permanently close underground storage tank systems was received by the cabinet or the confirmed release was reported to the cabinet.

(3) A UST system owner or operator that chooses to remove a UST system from the ground that was permanently closed in place, or empty and taken out of service, prior to December 22, 1988 shall comply with the requirements that were in place prior to April 18, 1994 regardless of the submittal date of the Notice of Intent Form.

(b) The owners and operators of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5026) was received (or reported at a confirmed release) between April 18, 1994 and January 1, 1996 shall comply with the closure requirements (or, for a confirmed release report, the corrective action requirements) in existence at the time the Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5026) was received or the underground storage tank system was closed.

In existence at the time the release was reported, unless a written request, signed by the owner or operator, is received by the cabinet. This request shall indicate that the owners and operators intend to close the site as specified in subsection (2) of this section and Section 3 through 7 of this administrative regulation.

(c) The owners and operators of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5026) was received by the Underground Storage Tank Branch of the Division of Waste Management (or that reported a confirmed release) prior to April 18, 1994 shall comply with the closure requirements (or, for a confirmed release report, the corrective action requirements) in existence at the time the release was reported, unless a written request, signed by the owner or operator, is received by the cabinet. This request shall indicate that the owners and operators intend to close the site as specified in subsection (2) of this section and Sections 3 through 7 of this administrative regulation, or as specified in 401 KAR 42:071.

(d) If the cabinet determines that a UST system that was closed before December 22, 1988 poses a current or potential threat to human health, safety, or the environment, the owner or operator shall assess the excavation and close the UST system in accordance with [subsections of this section and Sections 3 through 7 of this administrative regulation].

[5] [29]: The documents incorporated by reference in Section 2
Section 3. [2] Incorporation by Reference. (1) The following documents are hereby incorporated by reference:
(a) "Underground Storage Tank System: Closure Outline" (October 1994); and
(b) "Notice of Intent to Permanently Close Underground Storage Tank(s) Form", DEP Form 4028 (July 1996); and
(c) "Closure Assessment Report Form", DEP Form 4058 (July 1996); and
(d) "Kentucky Underground Storage Tank: Assessment Well Form", DEP Form 4053 (July 1996); and
(e) American Petroleum Institute Recommended Practice 4531, "Removal and Disposal of Used Underground Petroleum Storage Tanks" (December 1987); and
(f) American Petroleum Institute Publication, 1995, "Safe Entry and Cleaning of Petroleum Storage Tanks" (May 1994); and
(g) American Petroleum Institute Recommended Practice 4531, "Inner Lining of Underground Storage Tanks" (April 1992).
(2) The documents referenced in subsection (1) of this section are available for inspection and copying, subject to copyright law, at the Kentucky Department of Environmental Protection, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6776, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

Session 3: Temporary Closure. (1) If a UST system is temporarily closed, the owners and operators shall continue operation and maintenance of corrosion protection and UST system release detection in accordance with 401 KAR 42:030 and 401 KAR 42:040. If a UST system release is suspected or confirmed, the owners and operators shall comply with 401 KAR 42:050 and 401 KAR 42:060. UST system release detection is not required as long as the UST system is empty.
(2) If a UST system is temporarily closed for more than three (3) months, the owners and operators shall comply with the following requirements:
(a) Leave vent lines open and functioning;
(b) Cap and secure all other lines, pumps, man ways, and ancillary equipment and
(c) Submit an amended "UST Facility Registration Notification for Underground Storage Tank System Form", DEP 7112, (August 2002) or (DEP Form 5023) (incorporated by reference in 401 KAR 42:020) to the cabinet [Underground Storage Tank Branch of the Division of Waste Management] indicating that the UST system has changed to temporary closure status.
(3)(a) If a UST system is temporarily closed for more than twelve (12) months, and does not meet the performance standards of 401 KAR 42:020, then the UST system [the above and operating laws] shall be permanently closed [the system]. In accordance with Section 4 of this administrative regulation [if it does not meet either the performance standards in 401 KAR 42:020 for new UST systems] or the upgrading requirements in 401 KAR 42:020 for existing UST systems, except that the spill and overflow equipment requirements do not have to be met.
(b) The owners and operators shall permanently close the system at the end of the twelve (12) month period, unless the cabinet provides an extension of the twelve (12) month temporary closure period. The cabinet may grant an extension if the cabinet determines that an extension would not have a detrimental impact on human health or the environment. [The owners and operators shall complete a closure assessment, in accordance with Section 4 of this administrative regulation, before applying for an extension.]

Section 4. [4] Permanent Closure and Changes in Service. (1)(a) Owners and operators shall notify the cabinet [Division of Waste Management] of their intent to permanently close or make a change in service for a UST system a minimum of two (2) weeks (fourteen (14) calendar days) [at least thirty (30) days] prior to beginning either the permanent closure or change in service under subsections (2) and (3) of this section. This notice shall be submitted on the "Notice of Intent to Permanently Close Underground Storage Tank System", DEP 7114, (January 2006) [DEP Form 5035] (incorporated by reference in Section 2 of this administrative regulation) or on a cabinet-approved form containing the same information. Initial abatement action shall not alleviate the owners and operators from notifying the cabinet of the intent to permanently close a UST system; however, the cabinet may specify a shorter notification time prior to permanent closure.
(b) The "Notice of Intent to Permanently Close Underground Storage Tank System", DEP 7114, (January 2006) [DEP Form 5035] shall only be valid for twelve (12) months following submittal to the cabinet [signature by the UST system owner, operator, or authorized representative]. The closure assessment required under Section 5 [4] [6] of this administrative regulation shall be performed after submitting notification to the cabinet, but prior to completing the permanent closure or change in service.
(2) To permanently close a UST system, the owners and operators shall empty and clean the UST system by removing all tank contents and residual tank materials. All UST systems permanently taken out of service shall be either removed from the ground or filled with an inert solid material.
(3) Continued use of a UST system to store a nonregulated substance shall constitute a change in service. Before a change in service occurs, owners and operators shall evaluate the UST system by removing the tank contents and residual tank materials. The owners and operators shall also conduct a closure assessment in accordance with Section 5 of this administrative regulation.

Section 5. [4][6] Assessing the Site at a Temporary Closure, Permanent Closure or Change in Service. (1)(a) Before completing permanent closure or change in service of a UST system, at or before the end of the twelve (12) month temporary closure period identified in Section 3(2)(3)[4][6] of this administrative regulation, the owners and operators shall measure the presence of a UST system release where contamination is most likely to be present. In selecting sample types, sample locations, and measurement methods, the owners and operators shall consider the method of closure, the nature of the substance, the types of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a UST system release. In accordance with 401 KAR 42:030, the requirements of this paragraph shall be satisfied if one (1) of the external UST system release detection methods allowed in 401 KAR 42:040 is operating in accordance with the requirements in 401 KAR 42:040 at the time of closure and indicating that no UST system release has occurred during the life of the UST system.
(b) The closure assessment requirement by paragraph (a) of this subsection shall be performed in accordance with the requirements of the "Underground Storage Tank System: Closure Outline", (August 2006) [incorporated by reference in Section 2 of this administrative regulation]. The "Closures Assessment Report", DEP 5055, (August 2006) [DEP Form 4055] (incorporated by reference in Section 2 of this administrative regulation) shall be received by the cabinet [Underground Storage Tank Branch of the Division of Waste Management] within ninety (90) days after UST system removal, closure, or change in service.
(2) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (1) of this section, or by any other manner, [the owners and operators shall begin initial response.] Initial abatement, site checks [check], site investigations, initial site characterization, free product removal, investigations for soil and groundwater contamination, corrective action, and public participation, shall be performed in accordance with 401 KAR 42:030.
(3) The handling, transportation, and disposal of any regulated substance from a UST system and any contaminated soils, backfill materials, groundwater, cleaning liquids, and other similar materials generated during activities performed pursuant to this administrative regulation [removed from the UST system or facility] shall be performed in accordance with applicable requirements of 401 KAR Chapters 30 through 49.

Section 6. [5] [6] Closure Records. ([4]) In accordance with 401 KAR 42:030 and the administrative regulation, the owners and
operators shall maintain records that demonstrate compliance with closure requirements under Section 5 [41] [6] of this administrative regulation. The results of the closure assessment required by Section 5 [41] [6] of this administrative regulation shall be maintained for at least three (3) years after receipt of the closure letter indicating that no further action is required for the permanent closure or change in service.

(c) The records required by subsection (1) of this section shall be maintained by either the owner or operator who closed the UST system or by the current owner or operator of the facility. If the records cannot be maintained at the facility, they shall be mailed to the Underground Storage Tank Branch of the Division of Waste Management.

Section 7. [67] [7]-Extensions. The owner or operator of a UST system may request extension of the [3] time frame for records [any report] required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment (warranted).

Section 8. [71] No Further Action Letter (1) If a [when the] UST facility has met all requirements in 401 KAR Chapter 42, the cabinet shall issue a no further action letter for the UST facility.

(2) Any unpaid registration fees due in accordance with 401 KAR 42:200 shall be paid in full prior to the cabinet issuing a no further action letter to any UST facility.

Section 9. [88] Incorporeation By Reference. (1) The following material is incorporated by reference:

(a) "Closure Outline" (August 2006);
(b) "Notice of Intent to Permanently Close Underground Storage Tank System", DEP 7114, (January 2006);
(c) "Closure Assessment Report", DEP 8055, (August 2006);
(d) American Petroleum Institute Recommended Practice 1624, "Closure of Underground Petroleum Storage Tanks", (Reaffirmed 2001);
(e) American Petroleum Institute Recommended Practice 1631, "Intensified and Periodic Inspection of Underground Storage Tanks", (June 2001); and
(f) American Petroleum Institute Publication 2015, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 811 C. Michael Davenport Blvd., Frankfort, Kentucky 40601, (502) 664-8681, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, and also may also be obtained on the Division of Waste Management's web page located at www.waste.ky.gov.

(3) This material may also be obtained by calling the Division of Waste Management at (502) 564-5981 or on the division's web page located at www.waste.ky.gov.

JOHN W. CLAY, Deputy Secretary
FOR LAUJANA WILCHER, Secretary
APPROVED BY AGENCY: July 12, 2006
FILED WITH LRC: July 13, 2006 at 4 p.m.
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VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 8, 2006)

401 KAR 42-090. Financial responsibility.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart H, Part 281, 42 U.S.C. 6901c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-120, 40 C.F.R. Part 280 Subpart H, Part 281, 42 U.S.C. 6901c

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and [Natural Resources and Environment] Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 [421] requires the cabinet to regulate underground storage tank (UST) systems by requiring registration [notification], minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224.60-105(2)(c) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. 401 KAR 42 [Chapter 42] This chapter identifies requirements for UST systems. This administrative regulation establishes requirements for demonstrating financial responsibility for corrective action and for compensation of third parties for bodily injury and property damage caused by sudden and nonevolved accidental UST systems releases arising from the operation of UST systems containing petroleum.

Section 1. Application [Adoption] of Federal Regulations. The requirements for demonstrating financial responsibility for corrective action and for compensation of third parties for bodily injury and property damage caused by sudden and nonevolved accidental UST systems releases arising from the operation of UST systems containing petroleum are governed by 40 C.F.R. Part 280 Subpart H, KRS 224.60-105, 224.60-120, and this administrative regulation (1994).

Section 2. State Fund Mechanism for Financial Responsibility. (1) The Petroleum Storage Tank Environmental Assurance Fund may be utilized as a mechanism to demonstrate financial responsibility in accordance with 40 C.F.R. 280.91 if the following requirements are satisfied:

(a) A person owns or operates a petroleum storage tank or tanks tank(s);

(b) The owner or operator certifies financial responsibility for the petroleum storage tank(s) in accordance with KRS 224.60-120; and

(c) The owner or operator registers the petroleum storage tank with the cabinet in accordance with 401 KAR 42.020.

(2) An owner or operator shall be deemed by the cabinet to have satisfied the requirements of subsection (1) to utilize the Petroleum Storage Tank Environmental Assurance Fund to meet the financial responsibility requirements of 40 C.F.R. 280.91 if:

(a) A Certificate of Grantation and Reimbursement Eligibility has been issued to the owner or operator of a petroleum storage tank in accordance with 401 KAR 42.020; and

(b) The cabinet has determined that the owner or operator qualifies for participation in the Financial Responsibility Account, or the Petroleum Storage Tank Account through compliance with 401 KAR 42.020 and 42.040.

(3) Federal and state-owned facilities shall not be eligible to utilize the state fund mechanism.

Section 3. Certification of Financial Responsibility. An owner or operator shall certify, through signature on the UST Facility Registration Form DEP 7112, (January 2006), required in 401 KAR 42.000, that financial responsibility has been established and maintained in accordance with Section 1 of this administrative regulation.
VOLUME 33, NUMBER 3 — SEPTEMBER 1, 2006

JOHN W. CLAY, Deputy Secretary
For LAULIANA WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRIS, August 8, 2006)


RELATED TO: KRS 224.10-100 [224.10], 224.60
STATUTORY AUTHORITY: KRS 224.10-100, (30) (224.60-400), 224.60-105, 224.60-150(1).
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-150 states that the cabinet shall levy and collect an annual fee of thirty (30) dollars per (each) underground storage tank (UST) system from owners or operators of UST systems [containing regulated substances] for the purpose of funding the administration of the underground storage tank program. KRS 224.10-100(30) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. [Underground Storage Tank Branch of the Division of Waste Management] This administrative regulation establishes provisions for the payment of an annual registration fee.

Section 1. Applicability. This administrative regulation shall apply to all owners and operators of UST systems, [need-to-store regulated substances.]

Section 2. Annual Registration Fee. (1) The owner or operator shall pay a thirty (30) dollar annual registration fee for each UST system that is in the ground and not permanently closed in accordance with 401 KAR 42-070, on July 1 of a year (July 1 through June 30).

(2) Payment shall be submitted to the Underground Storage Tank Branch of the Division of Waste Management.

(3) Checks shall be made payable to the Kentucky State Treasurer and be submitted within thirty (30) days after receipt of an invoice from the cabinet specifying the required payment.

Section 3. [3.] New Registrations. For a new registration, the (Noticeation. (1) The current owner of a UST system shall notify the cabinet of the existence of the UST system by completing a Notification of Underground Storage Tank System Form (DEP Form 50324) in accordance with 401 KAR 42-020. This form (incorporated by reference in 401 KAR 42-020) shall be submitted to the Division of Waste Management. Underground Storage Tank Branch, 14 Reilly Road, Frankfort, Kentucky 40601 no later than thirty (30) days after installation of the UST system. Upon acceptance of the completed form, the cabinet shall assign a facility identification number and notify the owner, in writing, of the facility identification number. [A fee of thirty (30) dollars per UST system, payable to the Kentucky State Treasurer, shall be submitted to the Underground Storage Tank Branch along with the initial "UST Facility Registration Form", DEP Form 7112, (January 2006), as required by and incorporated by reference in 401 KAR 42-020 [Notification of Underground Storage Tank System Form].]

Section 4. [A.] Amended Registrations. (1) Notification. (a) Ownership of the UST system;

(b) Description of the UST System; or

(c) Financial responsibility.

(2) IF amending the Notification of Underground Storage Tank System Form for an existing UST system, no fee shall be required.

(3) IF amending the "UST Facility Registration Form", DEP Form 7112, (January 2006) is amended in accordance with 401 KAR 42-020, [Notification of Underground Storage Tank System Form] to include one (1) or more additional UST systems, the amended form shall be accompanied by payment of any annual registration fees that may be due, including any outstanding fees for preexisting UST systems.

(4) Fees due shall be calculated at a rate of thirty (30) dollars for each additional UST system for each year (July 1 through June 30) the UST system was in the ground.

(5) The fee for any year (July 1 through June 30) shall be due if the UST system was in the ground on July 1 of that year.

(6) Fees shall not be due for years prior to the one (1) beginning July 1, 1990.

(7) [6] If an unregistered UST system is discovered during permanent closure activities pursuant to 401 KAR 42-070, (4) an unregistered UST system is discovered during permanent closure activities, an amended Notification of Underground Storage Tank System Form shall be submitted to the Underground Storage Tank Branch of the Division of Waste Management to register the newly discovered UST system. A one (1) time registration fee of thirty (30) dollars shall be submitted for each discovered UST system within thirty (30) days after discovery. Registration fees for previous years shall not be [are not] required.

Section 5. [4.] Changes of Ownership. If ownership of a UST system changes, any [4.] If ownership of a UST system changes, the new owner shall complete and submit an amended Notification of Underground Storage Tank System Form to indicate the new ownership. The form shall include the previously assigned facility identification number and shall be submitted to the Underground Storage Tank Branch within thirty (30) days after the transaction. [If an owner sells a UST system, the seller shall advise the new owner of the obligation to submit an amended Notification of Underground Storage Tank System Form to the Underground Storage Tank Branch that indicates the change in ownership. Also, the seller shall submit the underground Storage Tank Branch within thirty (30) days after the transaction, a copy of the properly executed deed or other mutually executed legal document supporting the sale of the UST system, along with a letter indicating the facility name as registered with the cabinet, the facility location, and the facility identification number. [Unpaid registration fees shall be the responsibility of the new owner.

[Section 5. Annual Registration Fee and Certificate of Notification. (1) The owner or operator shall pay a thirty (30) dollar annual registration fee for each UST system that is in the ground on July 1 of a year (July 1 through June 30). This fee shall not be required for UST systems that have been permanently closed in accordance with 401 KAR 42-070 or 401 KAR 42-021. Payment shall be submitted to the Underground Storage Tank Branch of the Division of Waste Management (payable to the Kentucky State Treasurer) within thirty (30) days after receipt of an invoice from the cabinet specifying the required payment.

(2) Annual registration fees submitted beginning with the July 1, 1993 year will be acknowledged with a Certificate of Notification (DEP Form 6052). The certificate shall be posted in a conspicuous location at the facility, and it shall expire one (1) year from the date of issuance.

JOHN W. CLAY, Deputy Secretary
For LAULIANA S. WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
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CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049.
ENIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department for Environmental Protection  
Division of Waste Management  
(As Amended at ARRS, August 8, 2006)  

RELATES TO: KRS 224.01-400, 224.01-405, 224.60-120, 224.60-130, 224E00-135, 224.60-140, 224.60-150  
STATUTORY AUTHORITY: KRS 224.60-120(8), 224.60-130  

(1)(a)(e)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(e) through (e) requires the establishment of the procedures to administer the Petroleum Storage Tank Environmental Assurance Fund (PSTEA F). This administrative regulation establishes those procedures.  

Section 1. Applicability. This administrative regulation establishes the eligibility requirements and procedures for an eligible petroleum storage tank owner or operator to make application and receive reimbursement from the cabinet to pay the cost of corrective action due to a release from a petroleum storage tank. Federal and state-owned facilities shall not be eligible for reimbursement from the PSTEAF.  

Section 2. Application for Assistance. (1) Within thirty (30) calendar days of a confirmed release, a petroleum storage tank owner or operator who has received a Certificate of Registration and Reimbursement Eligibility, pursuant to and incorporated by reference in 401 KAR 42.020, or a Certificate of Eligibility, issued prior to the effective date of this administrative regulation, which indicates that the owner or operator is eligible to participate in the Financial Responsibility Account or the Petroleum Storage Tank Account, shall complete and submit to the cabinet an “Application for Assistance”, DEP 0083 (August [January] 2006) as incorporated by reference in Section 26 of this administrative regulation.  
(2) An owner or operator who has not submitted an Application for Assistance for a confirmed release prior to the effective date of this administrative regulation shall submit a completed Application for Assistance pursuant to and incorporated by reference in 401 KAR 42.020.  
(3) The eligible petroleum storage tank owner or operator shall certify in the Application for Assistance that:  
(a) A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet; and  
(b) A contract has been entered into and submitted in accordance with Section 3 of this administrative regulation.  
(4) A written notice, in accordance with 401 KAR 42.070, shall be submitted to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement.  
(5) The cabinet shall identify in writing deficiencies in a submitted Application for Assistance. The cabinet may request additional information and documentation from the applicant, if necessary, to approve the Application for Assistance. Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the application to be denied. A request for an extension of time in which to submit the requested information shall be submitted in writing to the cabinet prior to the deadline. Denial of the Application for Assistance shall not prevent the petroleum storage tank owner or operator from resubmitting if the requested documentation becomes available.  
(6) If the petroleum storage tank owner or operator meets the requirements of subsections (2) and (3) of this section, the cabinet shall:  
(a) Approve the Application for Assistance;  
(b) Re-evaluate the eligibility of the owner or operator to receive reimbursement from either the Financial Responsibility Account or the Petroleum Storage Tank Account according to Section 4 of this administrative regulation; and  
(c) If the evaluation results in changing the owner’s or operator’s account placement from the initial placement made prior to the submittal of the Application for Assistance, the cabinet shall issue an amended “Certificate of Registration and Reimbursement Eligibility”, DEP 7113 (January 2006), incorporated by reference in 401 KAR 42.020.  

Section 3. Contracts. (1) A petroleum storage tank owner or operator shall obtain a contract from a certified company, if work was initiated on or after July 1, 1999, to be eligible for reimbursement from the cabinet for:  
(a) The performance of release investigation, site check or site investigation[,] for a facility; and  
(b) The development and implementation of a corrective action agreement in accordance with Section 17 of this administrative regulation.  
(2) The contract shall be obtained and submitted to the cabinet prior to commencing activity, except for those actions directed and documented by the cabinet’s Environmental Response Team upon the cabinet’s declaration of an environmental emergency.  
(3) If a contract is changed or revised, a copy of that contract shall be submitted to the cabinet within thirty (30) days of execution.  

Section 4. Account Placement. (1) An owner or operator of a petroleum storage tank shall be eligible to receive reimbursement for corrective action costs and third-party claims, incurred on or after April 8, 1990, from the Financial Responsibility Account if the cabinet determines the petroleum storage tank owner or operator to have satisfied the following requirements:  
(a) Registered the tanks with the cabinet in accordance with 401 KAR 42.020 prior to the release requiring corrective action;  
(b) Maintained UST system release detection as required by 401 KAR 42.040. A petroleum storage tank permanently or temporarily closed, in compliance with 401 KAR 42.070, shall have maintained compliance with UST system release detection requirements prior to the permanent or temporary closure of the system;  
(c) Maintained corrosion protection as required by 401 KAR 42.030;  
(d) Maintained overfill and spill prevention as required by 401 KAR 42.030 for those tanks in operation after December 22, 1996;  
(e) Received a “Certificate of Registration and Reimbursement Eligibility”, DEP 7113 (January 2006) for the facility, pursuant to 401 KAR 42.020, or a Certificate of Eligibility issued prior to the effective date of this administrative regulation;  
(f) Filed a notice of intent form, incorporated by reference in 401 KAR 42.070, if applicable, with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirements of 401 KAR 42.070;  
(g) Reported the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400 and 401 KAR 42.050;  
(h) Performed initial abatement procedures as required by the “UST System Release Response and Initial Abatement Requirements Outline” (August [January] 2006), incorporated by reference in 401 KAR 42.060; and  
(i) With regard to reimbursement for third-party claims, has complied with the requirements of 401 KAR 42.300.  
(2) An owner or operator of a petroleum storage tank who is not eligible for participation in the Financial Responsibility Account, shall be eligible for reimbursement by the Petroleum Storage Tank Account for the cost of corrective action incurred on or after April 9, 1990, if the cabinet determines the petroleum storage tank owner or operator has satisfied the following requirements:  
(a) Registered the facility with the cabinet in accordance with 401 KAR 42.020;  
(b) Filed a notice of intent form with the cabinet to permanently close the petroleum storage tanks at the facility (if applicable) or to make a change-in-service (if applicable) to comply with the requirement of 401 KAR 42.070; and  
(c) Reported a release to the cabinet as required by KRS
224.01-400 and KRS 224.01-405.

(3) Facilities placed in the Petroleum Storage Tank Account shall not be eligible for third-party coverage.

Section 5. Entry Level to the Financial Responsibility Account and Petroleum Storage Tank Account. (1) For facilities with releases confirmed after the effective date of the administrative regulation, a petroleum storage tank owner's or operator's entry level shall be deducted from the overall reimbursement except as provided in subsections (2) and (3) of this section.

(2) An entry level shall not be deducted from the overall reimbursement if the owner or operator participated in the Small Owner Tank Removal Account in accordance with 401 KAR 42:330.

(3) The entry level shall not be deducted from the overall reimbursement if the owner or operator is directed by the cabinet to perform a site check, in accordance with 401 KAR 42:063, for the facility and the laboratory analyses indicate corrective action is not required at the facility.

(4) Upon request by the petroleum storage tank owner or operator, the cabinet shall reimburse, upon final payment, twenty-five (25) percent of the entry level if the petroleum storage tank owner or operator has:

(a) Completed corrective action at the facility within:
   1. 180 days from the discovery of the release, for soil remediation alone; or
   2. Twenty-four (24) months from the discovery of the release, for groundwater alone or for both soil and groundwater remediation; and
   (b) Received a no further action letter without additional measures being required.

Section 6. Newly Discovered Underground Storage Tank System. (1) A newly-discovered underground storage tank system encountered at a facility during the performance of corrective action due to a release from a registered tank shall not affect an owner's or operator's account placement eligibility.

(2) The number of newly discovered tanks shall not increase the entry level of the owner or operator.

Section 7. Preestablished Fixed Cost Reimbursement. (1) All reimbursements shall be made on the basis of preestablished fixed costs as established in the "Contractor Cost Outline" [August [January] 2006] [incorporated by reference in Section 26 of this administrative regulation], except as provided for in Section 8 through Section 19 of this administrative regulation and 401 KAR 42:330.

(2) (a) The preestablished fixed cost shall be identified within a written directive issued by the cabinet pursuant to 401 KAR 42:060 and shall be:

1. Remitted by the cabinet on the appropriate reimbursement cost worksheets attached to the written directive as identified below:
   a. "Initial and Intermediate Site Investigation and Site Check for a Facility" worksheet, DEP 6065C, [August [January] 2006] [incorporated by reference in Section 26 of this administrative regulation]; and
   b. "Final Site Investigation for a Facility" worksheet, DEP 6066D, [August [January] 2006] [incorporated by reference in Section 26 of this administrative regulation]; and

2. Considered the final cost for the completion of the written directive and shall serve as an obligation and guarantee of payment in accordance with KRS 224.60-1405.

(b) Fixed cost reimbursement shall be made after the following actions are completed:

1. The submittal and approval of an Application for Assistance in accordance with Section 2 of this administrative regulation;

2. A determination by the cabinet that the report submitted in response to each written directive is complete and meets the requirements of 401 KAR Chapter 42;

3. The submittal of necessary documentation pursuant to the "Contractor Cost Outline" [August [January] 2006] [and the required documentation pursuant to Section 26 of this administrative regulation]; and

4. The submittal of signed worksheets provided with the written directive from the cabinet.

(3) The initial fixed cost for over-excavation shall be identified on the "Over-Excavation" worksheet, DEP 6066E, [August [January] 2006] [incorporated by reference in Section 26 of this administrative regulation]. An estimate of the tonnage removed shall be based on the volume and density of material in the proposed excavation area. The cabinet shall convert cubic yards to tons using a density of 1.5 tons per cubic yard. Actual reimbursement shall be based on:

(a) [a.] A submittal of weigh tickets, or

(b) [b.] The actual area of over-excavation, not to exceed the initial estimate as identified on the "Over-Excavation" worksheet, DEP 6066E, [August [January] 2006].

(4) Preestablished fixed costs identified by the cabinet for corrective action agreements shall be determined based on the negotiated agreement between the cabinet and petroleum storage tank owner or operator.

Section 8. General Requirements for the Submittal of Claims for which there is no Preestablished Fixed Cost. (1) Any eligible costs for which a directive was issued prior to the effective date of the administrative regulation shall be submitted on the forms in effect at the time the directive was issued.

(2) Cost estimates shall be submitted on the appropriate reimbursement cost worksheets [worksheets], and approved by the cabinet, prior to incurring costs for actions not covered in Section 7 or Section 10 of this administrative regulation. The cabinet shall establish a reimbursable amount based on a cost estimate submitted by the contractor, which shall serve as an obligation and guarantee of payment in accordance with KRS 224.60-1405.

(3) The request for reimbursement associated with a written directive that does not include a preestablished fixed cost, issued by the cabinet after the effective date of this administrative regulation, shall be submitted on the appropriate reimbursement cost worksheet as an attachment to the required technical report.

(4) The cabinet may require additional information and documentation to determine that an eligible request for reimbursement is necessary and reasonable. Actions necessary as a result of mistakes, omissions, or inefficiencies of the certified contractor occurring during the performance of corrective action, shall not be reimbursed.

(5) The cabinet shall issue a determination pursuant to KRS 224.60-1407 as to whether the costs submitted in the claim are eligible for reimbursement. [If the claim is determined to be deficient, the cabinet shall notify the applicant of the deficiencies. Supplemental information to correct the deficiencies shall be submitted by the applicant and received by the cabinet within thirty (30) days of the receipt of the notice by the applicant. The cabinet shall grant the applicant a thirty (30) day extension if the written request is received within thirty (30) days of receipt of the notice of deficiency.] (6) (If the applicant fails to correct the deficiency or to supply the additional information required by the cabinet, that portion of the claim shall be denied.

(7) The cabinet shall issue a determination pursuant to KRS 224.60-1407 as to whether the costs submitted in the claim are eligible for reimbursement.

(8) All claims shall be submitted within two (2) years after issuance of a no further action letter by the cabinet.

Section 9. Claim Submittal for Declared Emergency Actions. (1) Reimbursement for costs incurred to abate an environmental emergency shall be limited to those reasonable and necessary actions as directed and documented by the Environmental Response Team (ERT) under the terms of a declared emergency.

(2) The claim request shall include the following documentation if the costs submitted were initiated after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064 (January 2006);

(b) "Invoice Listing Form", DEP 6065 (January 2006);

(c) "Environmental Response Team Declared Emergency" worksheet, DEP 6065A (August [January] 2005);

(d) Original invoices as required in the "Contractor Cost Outline" [August [January] 2006];
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(a) Documentation outlining the specific cabinet directives and dates from ERT; and
(b) Documentation to establish that the petroleum storage tank owner or operator has complied with the administrative regulations or written directives from ERT.

(3) Claims submitted shall be reviewed within thirty (30) days of receipt.

(4) Future reimbursement for actions subsequent to the close of the declared emergency will be contingent upon written directives from the cabinet or entailing into a corrective action agreement.

Section 10. Third-party Claims. Third-party claims shall be submitted in accordance with 401 KAR 42:300 and shall include the "Third-party claim Form", DEP 6078, (January 2006).

Section 11. Capital Equipment. (1) A petroleum storage tank owner or operator who has been directed by the cabinet to initiate corrective action that requires the purchase of equipment costing in excess of $1,000 shall obtain prior approval of the purchase by submitting a "Capital Equipment Purchase/Rental Request", DEP 6071, (January 2006) form.

(2) Reimbursement using the "Capital Equipment Claim Form", DEP 6070, (January 2006) shall be limited to the purchase price, less determined salvage value, as approved by the cabinet.

(3) The cabinet shall approve either the purchase or rental of remediation equipment and shall establish the amount to be reimbursed, in accordance with the "Contractor Cost Outline", (August 2006).

Section 12. Claims for Initial Abatement-free Product Recovery. (1) Reimbursement requests for costs incurred during initial abatement or free product recovery actions, as directed by the cabinet, shall be submitted to the cabinet as a claim. The claim request shall include the following documentation if the written directive is issued by the cabinet after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064, (January 2006);
(b) "Invoice Listing Form", DEP 6065, (January 2006);
(c) "Initial Abatement and Free Product Recovery" worksheet, DEP 6066B, (August 2006); and
(d) Original invoices as required in the "Contractor Cost Outline", (August 2006).

(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete, in accordance with 401 KAR 42:060.

Section 13. Claims for Quarterly Monitoring Reports and System Maintenance. Reimbursement for costs incurred for quarterly monitoring, system maintenance, and reporting shall be limited to those actions specified in the approved and implemented corrective action plan.

(1) If the work was initiated after the effective date of this administrative regulation, claim requests shall include the following documents:

(a) "Claim Request Form", DEP 6064, (January 2006);
(b) "Invoice Listing Form", DEP 6065, (January 2006);
(c) "Quarterly Monitoring Reporting and System Maintenance" worksheet, DEP 6066G, (August 2006); and
(d) Original invoices as required in the "Contractor Cost Outline", (August 2006).

(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete.


(2) The claim request shall include the following documentation if the costs submitted were incurred after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064, (January 2006);
(b) "Invoice Listing Form", DEP 6065, (January 2006);
(c) "Over-Excavation" worksheet, DEP 6066E, (August 2006);
(d) Original invoices as required in the "Contractor Cost Outline", (August 2006); and
(e) Backup documentation required to support each task as required on the worksheet.

(3) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete, in accordance with 401 KAR 42:060.

Section 15. Claims for Miscellaneous Tasks. (1) The "Miscellaneous Tasks" worksheet, DEP 6066H, (August 2006) shall be completed to initiate reimbursement for the following actions:

(a) Nonemergency initial abatement actions pursuant to 401 KAR 42:060 conducted prior to a directive being issued by the cabinet;
(b) Transportation and disposal of drums containing purged water or soil cuttings not reimbursed on a previous claim;
(c) Initial review of facility information by a newly contracted certificated company and contractor having no previous knowledge of the facility;
(d) Decommissioning of cisterns or drinking water wells as required to address conditions at the regulated facility;
(e) Monitoring well pad replacement;
(f) Tank and line tightness testing, as requested in writing by the cabinet, for corrective action activities;
(g) Encroachment permit or off-site access agreements, if required by the cabinet;
(h) Dye trace tests;
(i) Backfill subsidence repair; or
(j) Corrective action activities proposed by the petroleum storage tank owner or operator, or directed by the cabinet that do not include a unit cost listed in this administrative regulation (are not listed in this administrative regulation).

(2) The claim request shall include the following documentation if the incurred costs submitted were initiated after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064, (January 2006);
(b) "Invoice Listing Form", DEP 6065, (January 2006);
(c) "Miscellaneous Tasks" worksheet, DEP 6066H, (August 2006);
(d) Original invoices as required in the "Contractor Cost Outline", (August 2006); and
(e) Backup documentation to support each task as required on the worksheet.

(3) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete, in accordance with 401 KAR 42:060.

Section 16. Claims for Facility Restoration. (1) A reimbursement request for costs related to facility restoration shall include the following information:

(a) "Claim Request Form", DEP 6064, (January 2006);
(b) "Invoice Listing Form", DEP 6065, (January 2006);
(c) "Facility Restoration" worksheet, DEP 6066I, (August 2006);
(d) Original invoices as required in the "Contractor Cost Outline", (August 2006); and
(e) Backup documentation required to support each task as required on the worksheet and
(f) A site map for a facility, to scale, depicting the area impacted by corrective action (for example, over-excavation), the area of facility restoration and photographs of the area before and after facility restoration.

(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete, in accordance with 401 KAR 42:060.

Section 17. Corrective Action Agreements. At the time the cabinet approves an owner or operator's interim or final corrective action plan pursuant to 401 KAR 42:060, the cabinet and the
owner or operator shall for purposes of reimbursement enter into a Corrective Action Agreement which shall set forth:
(1) Method of reimbursement;
(2) Amount to be reimbursed; and
(3) Rate or schedule of payment.

Section 18. Criteria for Approval of a Claim. (1) A claim with an approved Application for Assistance for the Financial Responsibility Account or the Petroleum Storage Tank Account shall be reviewed to determine if:
(a) The corrective action complies with 401 KAR Chapter 42 and written directives from the cabinet;
(b) Each cost is necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42 and written directives from the cabinet;
(c) The claim form is accurate and complete;
(d) All supplemental information has been supplied;
(e) The applicant has complied with Section 25 of this administrative regulation; and
(f) Annual tank fees have been paid as required by KRS 224.60-150.

(2) Reimbursement shall be made by a check remitted to the eligible petroleum storage tank owner or operator.


Section 20. Signatures. (1) Forms required by this administrative regulation for which a signature is mandated shall be signed by an eligible petroleum storage tank owner or operator as follows:
(a) For a corporation, by:
  1. A president or secretary;
  2. The duly authorized representative or agent of the president or secretary if the representative or agent is responsible for overall operation of the facility; or
  3. A person designated by the board of directors by means of a corporate resolution.
(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or
(c) For a municipality, by:
  1. A principal;
  2. Executive officer; or
  3. An elected official.
(2) A claim form or Application for Assistance shall also be signed by:
(a) The certified contractor who is responsible for overseeing corrective action, unless corrective action commenced prior to March 1, 1993; and
(b) An authorized representative of the certified company, unless corrective action commenced prior to July 1, 1999.
(3) The owner or operator shall submit documentary evidence to substantiate the legality of an authorized representative's power of agency or power of attorney.

Section 21. Loss of Future Reimbursement Eligibility. (1) A petroleum storage tank owner or operator shall be ineligible to receive future reimbursement from the Financial Responsibility Account or Petroleum Storage Tank Account if the petroleum storage tank owner or operator has:
(a) Knowingly or intentionally submitted false or inaccurate Information to the cabinet; or
(b) Knowingly made a false statement, representation, or certification in an application, reimbursement request, or other document submitted to the cabinet.
(2) A cost incurred by, or paid from, the cabinet which is based on false or inaccurate information, or a false statement, representation, or certification shall be recovered by the cabinet from the person who asserted the false or inaccurate information, or false statement, representation, or certification.
(3) The cabinet shall have the right to recover the money paid to a petroleum storage tank owner or operator, or a contractor if:
(a) The amount was paid due to an error of the cabinet; or
(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the petroleum storage tank owner or operator or in an invoice submitted by a contractor; or
(c) A person has obtained reimbursement from the cabinet by fraud or intentional misrepresentation.

Section 22. Subrogation. Prior to making reimbursement of a claim, the cabinet shall acquire, by subrogation, the rights of the person receiving reimbursement to recover the amounts paid by the cabinet for the performance of corrective action from the person responsible or liable for the release.

Section 23. Facility Inspections. The cabinet may conduct inspections in accordance with KRS 224.60-150(1)(f) to determine the reasonableness and necessity of the costs of corrective action.
(1) The cabinet shall be authorized to enter and inspect a facility seeking reimbursement for the costs of corrective action.
(2) Refusal to allow a cabinet employee entry and inspection of a facility shall make the owner or operator ineligible for reimbursement. Money previously paid to the petroleum storage tank owner or operator of the facility shall be repaid to, or recovered by, the cabinet.
(3)(a) Cabinet personnel shall be present at the facility during all petroleum storage tank permanent closure activities, except as provided in paragraphs (d) and (e) of this subsection;
(b) A petroleum storage tank owner or operator shall contact the appropriate Field Operations Branch regional office, by certified mail, to schedule a date to have an Inspector present at the facility during petroleum storage tank permanent closure activities. The certified mail notice shall be received a minimum of fourteen (14) calendar days prior to commencement of the permanent closure;
(c) If the inspector cannot be present at the facility on the day scheduled by the notice sent as required in paragraph (b) of this subsection, he may, by written notice, require the petroleum storage tank owner or operator to reschedule the permanent closure to a proposed date. This notice must be mailed by the cabinet no later than ten (10) days prior to the date scheduled by the petroleum storage tank owner;
(d) If the inspector fails to issue notice to reschedule the permanent closure, or is not present on the day set by the notice, the permanent closure may proceed without penalty; and
(e) This provision shall not apply to an emergency removal ordered by the cabinet.
(4)(a) A petroleum storage tank owner or operator shall:
  1. Provide an Inspector full access to an area or well for the collection of samples;
  2. Split samples obtained at the facility with the cabinet, if required by the inspector;
  3. Resample an area or well for which the result of analytical testing obtained by the cabinet differs significantly from the result obtained by the petroleum storage tank owner or operator, and;
  4. Have the burden of proving the validity of analytical results, if a discrepancy remains after resampling.
(b) The cabinet shall not reimburse the costs of resampling, if the cabinet determines that proper sampling, sample handling or analytical protocols were not adhered to by the contractor or certified laboratory.
(c) Failure to allow sample collection, or to split samples with the cabinet, shall render the owner or operator ineligible for reimbursement.

Section 24. Affidavits and Waivers. The following forms shall be submitted to the cabinet prior to reimbursement:
(1) "Payment Verification Affidavit Form", DEP 6075, (January 2006) and
(2) If required by KRS 224 60-140(18), a "Payment Waiver Form", DEP 6077, (January 2006) executed by each affected vendor and subcontractor.

Section 25. Account Balance. (1) The unobligated balance of the Financial Responsibility Account shall not be less than $1,000,000,000, so as to ensure a $1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a $500,000 reserve balance for emer-
gencency abatement action by the cabinet pursuant to KRS 224.60-135. The $500,000 reserved for the cabinet’s emergency abatement actions shall be renewed in that amount annually.

(2) If the unobligated balance of the Financial Responsibility Account is $1,500,000 or less, or the reimbursement of additional claims would cause the unobligated balance of the fund to be less than $1,500,000, the cabinet shall immediately suspend claim reimbursements and the approval of applications until the unobligated balance is greater than $1,500,000. When the suspension is lifted, the priority of reimbursement for claims submitted related to an approved application for assistance shall be determined by the date of the claim submitted.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) “Application for Assistance”, DEP 6063, (August [January] 2006);
   (b) “Claim Request Form”, DEP 6064, (January 2006);
   (c) “Invoice Listing Form”, DEP 6065, (January 2006),
   (d) “Capital Equipment Claim Form”, DEP 6070, (January 2006);
   (e) “Capital Equipment Preapproval Purchase/Rental Request”, DEP 6071, (January 2006);
   (f) “Payment Verification Affidavit”, DEP 6075, (January 2006);
   (g) “Payment Waiver Form”, DEP 6077, (January 2006),
   (h) “Environmental Response Team Declared Emergency worksheet”, DEP 6066A, (August [January] 2006);
   (i) “Initial Abatement & Fine Product Recovery worksheet”, DEP 6066B, (August [January] 2006);
   (j) “Initial and Intermediate Site Investigation and Site Check for Facilities” worksheet, DEP 6065C, (August [January] 2006);
   (k) “Final Site Investigation for a Facility” worksheet, DEP 6066D, (August [January] 2006);
   (l) “Over-Excavation worksheet”, DEP 6065E, (August [January] 2006);
   (m) “Quarterly Monitoring Reports and System Maintenance” worksheet, DEP 6066G, (August [January] 2006);
   (n) “Miscellaneous Tasks” worksheet, DEP 6066H, (August [January] 2006);
   (o) “Facility Restoration” worksheet, DEP 6066I, (August [January] 2006);
   (p) “Third Party Claim Form”, DEP 6078, (January 2006); and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays, and may also be obtained on the Division of Waste Management’s web page located at www.waste.ky.gov.

JOHN W. CLAY, DEPUTY Secretary
For LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: July 12, 2006
FILED WITH LRC: July 13, 2006 at 4 p.m.
CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Bruce.Scott@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at AARRS, August 8, 2006)

401 KAR 42:290. Ranking system.

RELATES TO: KRS 12 010-12.020, 224.60-120, 224.60-130, 224.60-140[,] 40 C.F.R. Part 286

STATUTORY AUTHORITY: KRS 224.60-130(1) (2)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.120(1) requires the cabinet to establish by administrative regulation the procedures to administer the financial responsibility and petroleum storage tank accounts of the Petroleum Storage Tank Environmental Assurance Fund. In accordance with KRS 224.60-130(1) (2)(a) this regulation establishes the criteria for ranking sites according to the extent of damage to the environment and the financial ability of the petroleum storage tank owner or operator to perform corrective action, in order to address the completion of corrective action and the subsequent payment of claims.

Section 1. Applicability. A ranking system to address the completion of corrective action and the payment of claims shall be established for the Financial Responsibility Account and the Petroleum Storage Tank Account, respectively, as set forth in Sections 2 and 3 of this administrative regulation.

Section 2. Ranking System for the Financial Responsibility Account. Facilities eligible to participate in the Financial Responsibility Account shall be ranked as follows:

(1) For purposes of determining extent of damage to the environment.

(a) Rank 1. Those facilities that are the source of confirmed contamination to domestic use wells, springs, or cisterns exceeding the levels specified in Groundwater Table I of the Classification Outline, (August [January] 2006), incorporated by reference in 401 KAR 42:080.

(b) Rank 2. Those facilities required to use the levels listed in Class IV and Groundwater Table I of the Classification Outline, (August [January] 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I.

(c) Rank 3. Those facilities required to use the levels listed in Class III and Groundwater Table I of the Classification Outline, (August [January] 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I but has [have] not resulted in the contamination of domestic use wells, springs, or cisterns. Facilities conducting corrective action under the provisions of 401 KAR Chapter 42 (the-regulations) in effect prior to April 18, 1994 shall be placed into this ranking if required to utilize the levels listed in Groundwater Table I and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I.

(d) Rank 4. Those facilities required to use the levels listed in Class IV and Groundwater Table II of the Classification Outline, (August [January] 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II but has [have] not resulted in the contamination of domestic use wells, springs, or cisterns.

(e) Rank 5. Those facilities required to use the levels listed in Class III and Groundwater Table II of the Classification Outline, (August [January] 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II but has [have] not resulted in the contamination of [and are not the source of contamination to] domestic use wells, springs, or cisterns.

(f) Rank 6. All other facilities that are not included in Ranks 1, 2, 3, 4, or 5, as specified in this subsection.

(2) Facilities shall be further categorized within their respective Rank as determined in subsection 1 of this section, based on the financial ability of the owner or operator as follows:

(a) Facilities shall be placed in Category 1 within their respective Rank.

(1) The owner’s or operator’s average total fade-due-gross income or average net income for the last five (5) years is less than $50,000, or
2. The owner's or operator's average total [adjusted-gross income or average-net income for the last five (5) years is more than $100,000; or]

2.1 The owner or operator is registered and recognized by the federal government as a tax-exempt nonprofit organization.

(b) Facilities shall be placed in Category 2 within their respective rank if:

(1) The owner’s or operator’s average total [adjusted-gross income or average-net income for the last five (5) years is more than $50,000 but less than $100,000; or]

2. The owner’s or operator’s average total [annual-revenue and income for the last five (5) years is more than $100,000 but less than $260,000;]

(c) Facilities shall be placed in Category 3 within their respective rank if:

(1) The owner’s or operator’s average total [adjusted-gross income or average-net income for the last five (5) years is more than $100,000; or]

(2) The owner’s or operator’s average total [annual-revenue and income for the last five (5) years is more than $260,000,]

(d) Facilities within each category shall be further prioritized based on the cabinet’s evaluation of the threat posed to human health and the environment by the release from a petroleum storage tank.

(e) The cabinet shall utilize the information provided in an owner’s or operator’s Application for Assistance, Incorporated by reference in 401 KAR 42:250, for purposes of determining financial ability to perform corrective action. The cabinet shall request additional information to be submitted if necessary to determine the financial ability to perform corrective action.

3. Cabinet inspectors shall be provided access to a facility for the purpose of verifying facility classification. Refusal by an owner or operator to allow access for additional information requested by cabinet inspectors shall render the facility ineligible for reimbursement from the cabinet.

4. If the cabinet receives misrepresentations, or otherwise inaccurate information, it may amend facility rankings and categories. If necessary, it may amend facility rankings and categories. If necessary, it may amend facility rankings and categories. If necessary, it may amend facility rankings and categories. If necessary, it may amend facility rankings and categories. If necessary, it may amend facility rankings and categories. If necessary, it may amend facility rankings and categories. If necessary, it may amend facility rankings and categories. If necessary, it may amend facility rankings and categories.

5. A facility that has been ranked based upon accurate classification of the facility shall not thereafter receive a lower priority ranking as a result of the performance of directed corrective actions.

Section 3. Facilities eligible to participate in the Petroleum Storage Tank Account shall be ranked as follows:

1. For purposes of determining extent of damage to the environment:

(a) Rank 1. Those facilities that are the source of confirmed contamination to domestic use wells, springs, or cisterns exceeding the levels specified in Groundwater Table I of the Classification Outline, (August January 2006), incorporated by reference in 401 KAR 42:060.

(b) Rank 2. Those facilities required to use the levels listed in Class IV and Groundwater Table I of the Classification Outline, (August January 2006), incorporated by reference in 401 KAR 42:060, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I but has [have not resulted in the contamination of [and are not the source of contamination to] domestic use wells, springs, or cisterns.

(c) Rank 3. Those facilities required to use the levels listed in Class III and Groundwater Table I of the Classification Outline, (August January 2006), incorporated by reference in 401 KAR 42:060, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I but has [have not resulted in the contamination of [and are not the source of contamination to] domestic use wells, springs, or cisterns.

(d) Rank 4. Those facilities required to use the levels listed in Class IV and Groundwater Table I of the Classification Outline, (August January 2006), incorporated by reference in 401 KAR 42:060, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I but has [have not resulted in the contamination of [and are not the source of contamination to] domestic use wells, springs, or cisterns.

Rank 5. Those facilities required to use the levels listed in Class III and Groundwater Table I of the Classification Outline, (August January 2006), incorporated by reference in 401 KAR 42:060, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I but has [have not resulted in the contamination of [and are not the source of contamination to] domestic use wells, springs, or cisterns.

Rank 6. All other facilities that are not included in Ranks 1, 2, 3, 4 or 5, as specified in this subsection.

2. For purposes of determining in subsection 1 of this section, based on the financial ability of the owner or operator (appellant) as follows:

(a) Facilities shall be placed in Category 1 within their respective rank if:

1. The owner’s or operator’s average total [adjusted-gross income or average-net income for the last five (5) years is less than $50,000; or]

2. The owner’s or operator’s average total [annual-revenue and income for the last five (5) years is less than $100,000;]

(b) Facilities shall be placed in Category 2 within their respective rank if:

1. The owner’s or operator’s average total [adjusted-gross income or average-net income for the last five (5) years is more than $50,000 but less than $100,000; or]

2. The owner’s or operator’s average total [annual-revenue and income for the last five (5) years is more than $100,000 but less than $260,000;]

(c) Facilities shall be placed in Category 3 within their respective rank if:

1. The owner’s or operator’s average total [adjusted-gross income or average-net income for the last five (5) years is more than $260,000; or]

2. The owner’s or operator’s average total [annual-revenue and income for the last five (5) years is more than $260,000;]

(d) Facilities shall be placed in Category 4 within their respective rank if:

1. The owner’s or operator’s average total [adjusted-gross income or average-net income for the last five (5) years is more than $260,000; or]

2. The owner’s or operator’s average total [annual-revenue and income for the last five (5) years is more than $260,000;]

(e) Facilities shall be placed in Category 5 within their respective rank if:

1. The owner’s or operator’s average total [adjusted-gross income or average-net income for the last five (5) years is more than $260,000; or]

2. The owner’s or operator’s average total [annual-revenue and income for the last five (5) years is more than $260,000;]

(f) Facilities shall be placed in Category 6 within their respective rank if:

1. The owner’s or operator’s average total [adjusted-gross income or average-net income for the last five (5) years is more than $260,000; or]

2. The owner’s or operator’s average total [annual-revenue and income for the last five (5) years is more than $260,000;]
Groundwater-Table-1 of the Petroleum-Underground-Storage-Tank System-Facility Classification Outline, incorporated by reference in 401 KAR 42-080, for a release of petroleum that poses a direct threat to a:
1. Domestic use well;
2. Domestic use spring;
3. Domestic use well head protection area;
4. Drinking water supply; or
5. Utility conduit.
(c) Third priority shall be given to a facility if a release:
1. Has impacted an area outside the facility's property boundary;
2. Has not contaminated and does not pose a threat to:
   a. Domestic use well;
   b. Domestic use spring;
   c. Domestic use well head protection area;
   d. Drinking water supply; or
   e. Utility conduit; and
3. Is not the source of furnaces in an occupied building.

Section 3. (4) The cabinet shall determine the financial ability of an applicant who owns or operates a single facility. The following persons shall certify that they do not have an ownership or operating interest in another facility:
1. For an individual owner or operator, the individual;
2. For a partnership, each partner;
3. For a closely held corporation that is not a subsidiary, affiliate, or parent corporation, each officer, director, and shareholder.

The cabinet shall determine the financial ability of an individual or partnership with an ownership or operating interest in more than one (1) facility if the applicant demonstrates that:
1. The sole source of income is revenue from the ownership or operation of the facility; and
2. The entity is unable to pay the entry level for participation in the petroleum storage tank account.

Section 4. Demonstration of Financial Ability. (1) To demonstrate financial ability, the individual, partnership, or corporation shall submit:
1. The last five (5) years of income tax returns for the person, partnership, or corporation.
2. Priority for reimbursement from the petroleum storage tank account on the basis of financial ability shall be given for:
   (a) First:
   1. An individual, partnership or corporation whose average adjusted gross income for the five (5) year period is less than $50,000;
   2. A public utility with an annual revenue and income of less than $100,000, or
   3. An entity registered and recognized by the federal government as a tax-exempt nonprofit organization;
   (b) Second:
   1. An individual, partnership, or a corporation whose average adjusted gross income for the five (5) year period is less than $100,000 but more than $50,000;
   2. A public utility with annual revenue or income of less than $250,000 but more than $100,000; and
   (c) Third:
   1. An individual, partnership, or corporation whose average not income for the five (5) year period is more than $100,000; or
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2. A public entity with an annual revenue and income of more than $250,000,
(3) A partnership applicant shall submit the name and Social Security number of each partner.
(4) A subchapter S or closely held C corporation applicant shall submit the name and Social Security number of each officer, director, and shareholder in the corporation.
(5) A public entity who is an applicant shall submit its annual budget for the last two (2) years to demonstrate financial ability.
(6) The cabinet shall require that additional information be submitted, if necessary, to determine the financial ability of an applicant.

Section 5. (1) The cabinet shall recover an amount paid to a person receiving consideration for financial ability if the information submitted to the cabinet is knowingly inaccurate or misrepresented, or knowingly made based on a false statement, representation, or certification in an application, payment request, or other document submitted to the cabinet. A cost incurred by, or paid from, the fund, which is based on knowingly false or inaccurate information, a false statement, representation, or certification shall be recovered from the person who asserted the knowingly false or inaccurate information, false statement, representation, or certification.
(2) A person certified pursuant to 401-KAR 42:314 or 401-KAR 42:316 who provides knowingly false or inaccurate information or who makes a false statement, representation, or certification on an application, payment request or other document submitted to the owner, operator, or the cabinet, shall be subject to revocation of that certification in accordance with 401-KAR 42:314 or 401-KAR 42:316, in addition to the recovery described in subsection (1) of this section.

Section 6. Priority For Payment or Reimbursement From The Petroleum Storage-Tank Account. Reimbursement or payment of the cost of corrective action shall be in order of priority according to the following:
(1) First, an owner or operator of a facility that meets the conditions of Section 4(1)(a) of this administrative regulation;
(2) Second, an owner or operator of a facility that meets the conditions of Section 4(1)(b) of this administrative regulation;
(3) Third, an owner or operator of a facility that meets the conditions of Section 4(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation;
(4) Fourth, an owner or operator of a facility that meets the conditions of Section 4(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation;
(5) Fifth, an owner or operator of a facility that meets the conditions of Section 4(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation;
(6) Sixth, an owner or operator of a facility that meets the conditions of Section 4(2)(d) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(d) of this administrative regulation;
(7) Seventh, an owner or operator of a facility that meets the conditions of Section 4(2)(e) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(e) of this administrative regulation;
(8) Eighth, an owner or operator of a facility that meets the conditions of Section 4(2)(f) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(f) of this administrative regulation;
(9) Ninth, an owner or operator of a facility that meets the conditions of Section 4(2)(g) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(g) of this administrative regulation;
(10) Tenth, an owner or operator of a facility that meets the conditions of Section 4(2)(h) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(h) of this administrative regulation;
(11) Eleventh, an owner or operator of a facility that meets the conditions of Section 4(2)(i) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(i) of this administrative regulation;
(12) A claim listed in subsection (1) through (11) of this section shall be paid in order of its category ranking. Within each category, the claim shall be considered by the date of receipt of the claim.
(13) A claim of a nongovernmental entity, not included in subsections (1) through (11) of this section, shall be paid according to financial ability as provided in Section 4 of this administrative regulation, in order of the date of receipt of the claim.
(b) An individual, partnership, or corporation with an average net income of more than $4,000,000.

1. Shall not submit an income tax return; and
2. Shall be paid after the claims addressed by subsections (1) through (13)(a) of the section in order of receipt of the claim.
(14) A claim from an organizational unit of the executive branch of the Commonwealth of Kentucky, as set forth in KRS Chapter 12 shall have its claim paid last in order of the date of receipt of the claim.
(b) A claim from a county, a municipality, or an administrative body that is not an organizational unit of the executive branch, shall be:
1. Paid based upon financial ability as determined in Section 4(2) of this administrative regulation, in order of receipt of the claim; and
2. Ranked in the same manner as a claim from a private person.

Section 7. (1) Payment of Certain Classes of Claims. The cabinet may determine that only specified classes of claims as described in Section 5 of the administrative regulation will be paid. In determining that a class of claims shall not be reimbursed, the cabinet shall consider the following factors:
(a) The impact of paying a particular class of claims on the cabinet’s ability to reimburse claims under the Financial Responsibility Account, 401-KAR 42:330; and the Smart Owners Tank Removal Account, 401-KAR 42:330;
(b) The current and expected income of the fund, and
(c) Actuarial projections for the number of future claims on the fund.
(2) The cabinet shall issue a public notice of the decision to suspend reimbursement of a class of claims.

JOHN W. CLAY, Deputy Secretary
For LAJUANA WILCHER, Secretary
APPROVED BY AGENCY: July 12, 2006
FILED WITH LRC: July 13, 2006 at 4 p.m.
CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Rally Road, Frankfort, Kentucky 40601, phone (502) 564-6718, fax (502) 564-4049, email Bruce.Scott@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Environmental Protection
Division of Waste Management
(As Amended at ARS, August 8, 2006)

401 KAR 42:300. Third-party claims.

RELATES TO: KRS 224.60-120, 224.60-130(1)(1)(1)(2)(3)(c), (e), 224.60-140(2)(b), (17), 40 C.F.R. Part 280 Subpart H
STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130(1)(3)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(3)(c) requires the establishment of a Financial Responsibility Account to reimburse eligible petroleum storage tank owners and operators for compensating third parties for bodily injury and property damage, and requires the cabinet to establish, by administrative regulation, eligibility requirements for the account. This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

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Section 1. Applicability. (1) An eligible third-party claim shall be limited to bodily injury and property damage, asserted against an owner or operator as a result of sudden or nonudden accidental releases [a "release"] into the environment from a petroleum storage tank at a facility eligible for participation in the Financial Responsibility Account.

(2) A petroleum storage tank owner or operator shall be eligible to receive reimbursement or payment for a third-party claim if:

(a) The owner or operator has been issued a "Certificate of Registration and Reimbursement Eligibility" DEP 7513 (January 2006), incorporated by reference in 401 KAR 42:260;

(b) The cabinet has approved the "Application for Assistance" DEP 6663 (August 2006); and

(c) The owner or operator has maintained compliance with the eligibility requirements of the Financial Responsibility Account pursuant to 401 KAR 42:260 or

(3) An owner or operator was issued a Certificate of Eligibility prior to the effective date of this administrative regulation;

(4) The cabinet approved a previously-utilized Application for Assistance; and

(5) The owner or operator has maintained compliance with the eligibility requirements for participation in the Financial Responsibility Account in effect at the time of approval. (The owner or operator has been issued a "Certificate of Registration and Reimbursement Eligibility", DEP 711, (January 2006), incorporated by reference in 401 KAR 42:260, and has maintained compliance with the eligibility requirements of the Financial Responsibility Account pursuant to 401 KAR 42:260, and


Section 2. Notice to the Cabinet. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall notify the cabinet of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third-party, or the receipt of an assertion of a claim in writing by a third-party.

(2) A third-party claim shall be paid on the basis of:

(a) A final and enforceable judgment; or

(b) A written agreement between a third party and the owner or operator, to be reviewed and approved by the cabinet [secretary].

(3) Settlement of claims.

(a) A settlement of a third-party claim shall not be made by an owner or operator without the prior approval of the cabinet.

(b) The cabinet shall not pay a third-party judgment or reimburse an owner or operator for payment of the judgment in an amount exceeding a settlement offer rejected by the owner or operator which was:

1. Not submitted to the cabinet for consideration; or
2. Previously approved by the cabinet.

Section 3. Payment of Claims. (1) Claim payment shall be limited to actual damage caused by the release of petroleum.

(2) A claim for property damage shall be paid to the extent that the damages are not addressed by the performance of corrective action. [Payment shall be made to the third-party after approval by the cabinet.]

(3) The aggregate amount of payment of all third-party claims shall not exceed $1,000,000 per occurrence of a release.

(4) The cabinet shall acquire by subrogation the right of the third-party to recover, from the person responsible or liable for the release, the amount of damages paid to the third-party.

(5) Reimbursement for third-party claims shall be made in accordance with 401 KAR 42:260, Section 2.

(6) Payment shall be made to the third-party after approval by the cabinet.

JOHN W. CLAY, Deputy Secretary
For LAJUNA WALTERS, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 8, 2006)


RELATES TO: KRS 224.10-420, 224.10-440, 224.60-110, 224.60-130(1)(2)(3)(a)

STATUTORY AUTHORITY: KRS 224.60-130(1)(3)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(3)(a)(a) requires the establishment of criteria to be met by persons who contract to perform corrective action. This administrative regulation establishes criteria for obtaining certification for an individual to be eligible to contract and to perform corrective action for a release from an underground petroleum storage tank. The administrative regulation is necessary to set minimum standards for determining:

1. Technical competency and proficiency in the performance of corrective action, and
2. General knowledge of:
   a. Cleanup standards required to obtain closure from the Underground Storage-Tank Branch;
   b. Health and safety standards; and
   c. Cabinet administrative regulations.

Section 1. Definitions. (1) "Interim contractor" means an individual who is not a certified contractor and is identified by a company to replace a certified contractor in accordance with Section 8 of this administrative regulation.

(2) "Participation," [et al.] means direct and substantial involvement in each aspect of corrective action and report preparation including site characterization, preparation of a site investigation report, preparation of a proposed corrective action plan, and implementation of a corrective action plan approved by the cabinet.

(3) "Supervisor" means having the authority and responsibility for the performance of corrective action at a facility as a result of a release from petroleum storage tank system, and having the ability to exercise independent judgment and to direct the activities of an employee or subcontractor in the performance of corrective action.

Section 2. Applicability. This administrative regulation sets criteria for being certified as a contractor, which shall include [including] the following:

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(1) Technical competency and proficiency in the performance of corrective action;
(2) General knowledge of 401 KAR Chapter 42; and
(3) General knowledge of health and safety standards.

Section 3. Certified Contractor Requirements for Reimbursement. (1) For an Application for Assistance, DEP 6063 (August 2006), incorporated by reference in 401 KAR 42:250, [applicability for assistance approved after March 1, 1998], a person who contracts to perform or supervise corrective action shall be certified by the cabinet to be eligible for reimbursement. (2) For an application approved after March 1, 1996, the cost for an action performed by a person who contracts to perform corrective action for a release from a petroleum storage tank system shall be eligible for reimbursement or payment from the fund if it is reasonable and necessary, and if the action is:
(a) Performed or supervised by an individual who is certified by the cabinet; and
(b) In compliance with 401 KAR Chapter 42.
(2) A certified contractor shall perform or supervise corrective action such as site checks, site investigations, and preparation and implementation of corrective action at facilities [plains], in accordance with 401 KAR Chapter 42.
(3)(a) To be eligible for reimbursement from the cabinet [fund], a person who contracts to perform corrective action shall, prior to incurring costs [seek], notify the cabinet and the owner or operator of the facility, in writing, of the name of the certified contractor designated to supervise the corrective action.
(b) If the certified contractor changes, a new notice shall be given.
(4) A person or company who installs, repairs, closes, or removes an underground storage tank, not involving the performance of corrective action, shall not be subject to this administrative regulation.

Section 4. [3] Application Requirements. (1) An applicant for certified contractor shall:
(a) Submit to the cabinet a completed "Certified Contractor Application", DEP 6072 (January 2006) [form];
(b) Submit verification of experience of participation in the performance of corrective action at facilities where a release occurred from a petroleum storage tank system, in accordance with Section 6 of this administrative regulation; and
(c) Comply with the examination requirements of Section 6 of this administrative regulation.
(2) An application to take the certified contractor examination shall be denied if the applicant:
(a) Fails to provide the information required by the application form; [as]
(b) Fails to comply with the experience requirement of this administrative regulation; or
(c) Makes a misrepresentation or submits false information in the application.
(3)(a) An applicant who has been assigned a testing date and time may request a change in the examination [testing] schedule by writing to the cabinet.
(b) If the request for a rescheduled examination [testing] date falls into another examination [testing] quarter, the applicant shall reapply to the cabinet.
(4) An applicant who wishes to retake [retest] the certified contractor examination shall reapply to the cabinet.

Section 5. [4] Experience Requirements. [4][4] The experience required for contractor certification is as follows:
(1) [1][A] Person with a degree in the physical, life, or environmental sciences with two (2) years participation, as defined in Section 1(2) of this administrative regulation, in the performance of corrective action.
(2) [2][b][A] Person without a degree in the physical, life, or environmental sciences with six (6) years participation, as defined in Section 1(2) of this administrative regulation, in the performance of corrective action. [An applicant shall demonstrate participation in the performance of corrective action, as defined in Section 1(2) of this administrative regulation, at a minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to making application.
(3) Technical training approved by the cabinet shall reduce the experience requirement of participation in the performance of corrective action to a maximum of four (4) facilities.
(4) Registration in Kentucky as a professional geologist shall reduce the experience requirements of participation in the performance of corrective action to a maximum of two (2) facilities.

Section 8. [6] Examination Requirements. Prior to the cabinet's approval of certification, an applicant for certified contractor shall pass a written examination administered by the cabinet.
(1) The examination for certification shall be a written multiple choice examination covering all aspects of:
(a) Corrective action for a release from a petroleum storage tank system. The examination shall test the applicant's knowledge of codes, standards, statutes [laws], regulations, current technology, and industry recommended practices with respect to performing corrective action where a release has occurred from a petroleum storage tank system; [as]
(b) Applicable occupational health and safety and public health and safety requirements. The examination shall test the applicant's knowledge of codes, standards, statutes [laws], regulations, current technology, and industry recommended practices with respect to occupational health and safety and public health and safety; and
(c) The reporting requirements, documentation requirements and procedures of 401 KAR Chapter 42 [the cabinet]. The examination shall test the applicant's knowledge of codes, [laws], and regulations.
(2) A minimum score of seventy-five (75) percent on the examination shall be considered passing.
(3) The examination shall be given upon prior appointment with the cabinet [examiner].
(4) The cabinet shall have a minimum of fourteen (14) calendar days to review the application and schedule [An application shall be filed with the cabinet at least ten (10) working days in advance of the testing date to take] the examination.
(5) The cabinet shall furnish the applicant with instructions for taking the examination upon receipt of a completed application. [The instructions shall refer the applicant to relevant statutes, regulations, and industry publications.]
(6)(a) Each examination shall be graded and the applicant notified of the result immediately upon completion of the examination [within fifteen (15) working days].
(b) Contractors who fail the examination shall be allowed to retake the examination no sooner than thirty (30) days from the previous examination date.
(6b) Examiner papers shall not be returned to or reviewed by the applicant.
(c) An applicant may review his test response sheet by appointment.
(d) The cabinet shall furnish the applicant with instructions for taking the examination, upon receipt of a completed application. [The instructions shall refer the applicant to relevant laws, regulations, and industry publications.]

Section 7. [6] Certification and Renewal Procedures. (1) The cabinet shall issue a certificate to each individual who successfully complies with this administrative regulation. The certificate shall be renewed two (2) years from the date of certification [biennially].
(2) An application for renewal shall be submitted to the cabinet on the "Certified Contractor Application", DEP 6072 (January 2006) [form for renewal].
(3) The certified contractor shall be responsible for renewing the certification prior to expiration. Certified contractors who fail to apply for renewal, prior to expiration, shall have thirty (30) days from the date of expiration to submit the required renewal application. Contractors who fail to submit the renewal application shall reapply for renewal in order to renew certification.
(4) The certificate shall not be renewed if an applicant:
(e) Fails to provide the information required by the "Certified Contractor Application", DEP 6072 (January 2006) [form].
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(b) Deny the request, for failure to meet the requirements of Section 5 of this administrative regulation.
(c) No individual company shall engage an interim contractor for more than six (6) months within a twelve (12) month period, if:

(b) Specify conditions appropriate to the facility and the interim contractor’s qualifications.

Section 10. Incorporation by Reference. (a) (1) "Certified Contractor Application", DEP 6072, (January 2006) is incorporated by reference to:
(b) "Certified Contractor Application Form (April 1998)."
(c) "Certified Contractor Application for Renewal Form (April 1998)."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays, and may also be obtained on the Division of Waste Management’s Web page located at www.waste ky.gov.

JON W. CLAY, Deputy Secretary
For LAURA S. WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.
CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reliay Road, Frankfort, Kentucky 40601, phone (502) 564-5716, fax (502) 564-5049, email Bruce.Scott@ky.gov

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 8, 2006)

401 KAR 42:316. Certification of contracting companies.
RELATES TO: KRS 224.10-420, 224.10-440, 224.60-130(3), (4), 224.60-140
STATUTORY AUTHORITY: KRS 224.60-130(1)(a) (3)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) (3)(a) requires the cabinet to establish by administrative regulation the procedures to administer the financial responsibility and petroleum storage tank accounts of the Petroleum Storage Tank Environmental Assurance Fund, and authorizes establishment of [fund/reimbursement] eligibility criteria for the certification of partnerships and companies that engage in corrective action. This administrative regulation establishes criteria for certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

Section 1. (Applicability. This administrative regulation establishes criteria for certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

Section 21 Certification Requirements. (1) A company or partnership [person] who contracts with an eligible owner or operator to perform corrective action shall be certified by the cabinet. The cost of corrective action performed by a company or partnership [person] not certified shall not be reimbursable.
(2) To be eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet [fund], the company or partnership [person] shall:
(a) Employ or contract with [or (contract with)] one (1) or more individuals certified by the cabinet pursuant to 401 KAR 42:314;
(b) Hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;
(c) Provide to the cabinet applicable work experience to demonstrate [to the cabinet] the technical, administrative and financial capability to perform and manage corrective action at the facility.

Section 9. (8) Internm Contractor. (1) A company engaged in the performance of corrective action at a facility shall immediately notify the cabinet in writing of the extended absence of a certified contractor due to an emergency or unexpected circumstance. The notification shall provide the following information:
(a) The name and qualifications of the individual replacing the certified contractor;
(b) Approval by the cabinet of the interim contractor.
(2) The cabinet shall evaluate the qualifications of the designated interim contractor, in accordance with Section 5 of this administrative regulation, and shall notify the company of its determination, in writing, within fifteen (15) days of receipt of the company’s notification. The cabinet shall:
(a) Approve [deny] the company’s request for designation of the interim contractor for a period not to exceed six (6) months and specify conditions appropriate to the facility and the interim contractor’s qualifications; or
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underground storage tank] facility; and

(d) Be approved in writing by the cabinet as certified to perform corrective action services in Kentucky.

(3) This requirement shall apply to corrective actions initiated [applications for assistance submitted to the cabinet] on or after July 1, 1999.

(4) An authorized representative [cabinet or principal] of a certified company shall sign an application or claim payment request in addition to [submitted to the fund by, or on behalf of,] the eligible owner or operator. The certified company shall certify that:

(a) The information or payment request has been reviewed and is true and correct; and

(b) Each claim payment cost is reasonable, necessary, and was performed in compliance with 401 KAR Chapter 42.

Section 2. [3][2] Application Requirements. (1) An applicant for company certification shall submit:

(a) A completed *Certified Company or [and] Partnership Application*, DEP 6073, (January 2005) [Form];

(b) Verification of the employment or contracting [or contracting] of one (1) or more individuals certified pursuant to 401 KAR 42:314;

(c) As references, the names and addresses of three (3) previous clients for whom environmental remediation has been performed by the company. If none, the applicant shall provide the names and addresses of three (3) previous or current clients of the individual certified pursuant to 401 KAR 42:314; and

(d) A list of the names and addresses of officers and principals of the applicant, and if applicable, a list of all stockholders.

(2) Cabinet staff may inspect facilities of the applicant if necessary to verify information in the application or to assist in the evaluation of the applicant’s capabilities.

(3)(a) The cabinet may require additional information and documentation if necessary to verify [determine] the applicant’s actual work experience [capabilities].

(b) The requirement for additional information and documentation shall be made by certified mail.

(c) The applicant shall submit the additional information within thirty (30) days of receipt of the request.

(4) An application for certified company status shall be denied if the applicant:

(a) Fails to provide the information required in the application or in this administrative regulation;

(b) Does not meet the requirements of subsection (1) of this section;

(c) Does not hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;

(d) Fails to allow [the] cabinet staff to access company records for audit purposes pursuant to 401 KAR 42:335 [inspect its facilities];

(e) Fails to provide additional information and documentation requested by the cabinet;

(f) Fails to demonstrate the technical, administrative and financial capability to perform and manage corrective action at underground storage tank facilities, given false or misleading information in the application;

(3) Has an officer, director, principal, or stockholder who has had a certification granted pursuant to 401 KAR 42:314, revoked or suspended; or [it]

(i) Has an officer, director, principal, or stockholder who was an officer, director, principal, or stockholder in a certified company, previously having had its certification revoked or suspended, or [it]

(k) Fails to maintain general and professional liability insurance and pollution property coverage.

(5) An applicant whose application for company certification is denied may appeal the determination by requesting a reconsideration or hearing pursuant to KRS 224.10-420, 224.10-440, and 401 KAR 100.010 [42:320].

(6) The cabinet shall issue a certificate to a qualifying applicant, indicating certification pursuant to this administrative regulation. [A certification shall be renewed annually–]

Section 3. [4] Certification and Renewal Procedures. (1) The cabinet shall issue a certificate to each company that successfully complies with this administrative regulation. The certificate shall be renewed two (2) years from the date of certification. The certified company shall be responsible for renewing certification prior to expiration.

(2) An application for renewal shall be submitted to the cabinet on the "Certified Company or Partnership Application", DEP 6073, (January 2005).

(3) Actions performed by a certified company, under contract with an owner or operator, that fails to renew its certification shall be ineligible for reimbursement of corrective action costs incurred after the expiration date.

Section 4. [5] [3] Revocation or Suspension of Certification. (1) A certification issued pursuant to this administrative regulation shall be revoked or suspended if the certified company:

(a) Has not obtained the certification through fraud or misrepresentation;

(b) Fails to perform a corrective action in a manner consistent with state or federal laws and regulations for safety or corrective actions, or fails to perform a corrective action consistent with generally acceptable professional standards.

(2) The cabinet [secretary] shall issue a letter by certified mail notifying a noncompliant certified company that its certification has been revoked or suspended by action of the cabinet.

(3) A person whose certificate is suspended or revoked may appeal the determination by requesting a hearing pursuant to KRS 224.10-420, 224.10-440, and 401 KAR 100.010 [42:320].


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JOHN W. CLAY, Deputy Secretary
For LAJUAN WILCHER, Secretary
APPROVED BY AGENCY: July 12, 2006
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CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Bailey Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Bruce Scott@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 8, 2006)


RELATES TO: KRS 224.60-105, 224.60-130[11(a) (9)(a), (b), (d), 224.60-140, 224.60-150, 40 C.F.R. 280 Part H]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130[11(a) (9)(a)] requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure.
and authorizes the cabinet to promulgate administrative regulations to establish this account [tank system removal-KRS 224.60-130(6)(a) and (b)] require the agency to promulgate administrative regulations to administer the fund. This administrative regulation establishes the eligibility requirements and rates for the reimbursement from [see] the Small Owners Tank Removal Account (SOTRA).

Section 1. Applicability. The provisions of this administrative regulation shall apply to [that class of] petroleum storage tank owners meeting the requirements of Section 2 of this administrative regulation [previously designated by state law], 40 C.F.R. 280 Part H, as required to remove or upgrade the facility's tanks on or before December 22, 1998.

Section 2. Eligibility. (1) To demonstrate eligibility, an owner shall submit a completed "SOTRA Application for Assistance", DEP 6067, (August 14, 2006). An owner shall be eligible for reimbursement from this account if:

(a) [4] The petroleum storage tank owner demonstrates full or partial interest in ten (10) or fewer tanks and meets the financial eligibility criteria listed on the "SOTRA Application for Assistance", DEP 6067, (August 14, 2006), or
(b) [4] An individual who,

(1) Has a five (5) year average adjusted gross income of $50,000 or less; and
(2) Owns a full or partial interest in ten (10) or fewer tanks;

(b) A partnership that,

(1) Has a five (5) year average adjusted gross income of $50,000 or less; and
(2) Is a member of the partnership own a full or partial interest in a total of ten (10) or fewer tanks;

(c) A corporation that,

(1) Has a five (5) year average total income of less than $50,000, and
(2) Owns a full or partial interest in a total of ten (10) or fewer tanks.

(d) A nonprofit corporation, and

(2) For an owner who is not a nonprofit corporation:

(a) The tanks are located on a facility that is or was involved in the retail sale or wholesale distribution of motor fuel;

(b) The tanks are registered with the Division of Waste Management, pursuant to KRS 224 60-105 and 401 KAR 42:020;

(c) The owner certifies that:

1. The retail sale or wholesale distribution of motor fuel at the facility under a UST system or systems will permanently cease upon permanent closure (removal) of the tanks; and
2. All known tanks at the facility are being removed or closed in place.

(d) The owner has owned the tanks for more than one (1) year prior to the date of the application for reimbursement from this account.

(2) A newly-discovered underground storage tank system [4] 
The discovery of a previously unknown or abandoned tank shall not affect the eligibility of an otherwise eligible owner.

(a) A tank shall not need to [need not] be in operation prior to its removal.

(4) A written notice shall be submitted to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement.

(5) Federal and state-owned facilities shall not be eligible for reimbursement from the Small Owners Tank Removal Account.

Section 3. Account Use. (1) Funds in this account shall be used to reimburse eligible petroleum storage tank owners for those reasonable and necessary costs incurred through performance of actions required in 401 KAR 42:070, [for reimbursing the reasonable and necessary cost of:

(a) Removal and disposal of petroleum storage tanks containing motor fuel;

(b) Disposal of contaminated-backfill or contaminated-water if required by law; and

(c) Post-removal or confirmation sampling required by the Division of Waste Management;]

(2) The use of this account shall be limited as specified in KRS 224.60-130(1) and

(a) [If contamination requiring corrective action is found by analysis, sample.] The owner of a facility shall be eligible for reimbursement of the cost of permanent closure [tank system removal], but shall not be eligible for payment of corrective action cost from this account.

(b) If corrective action is required, eligible reimbursement shall be governed by 401 KAR 42:250 [the office receives a notice from the cabinet requiring corrective action at the facility, the owner shall be reimbursed for tank system removal and his documents then transferred for review under the financial responsibility account, 401 KAR 42:280, or the petroleum storage tank account, 401 KAR 42:270].

(4) If expenditures from this account exceed $3,000,000 during any fiscal year, the cabinet may suspend further reimbursments from this account. The suspension shall be in effect until the cabinet determines that further reimbursements from this account will not threaten the solvency of the Petroleum Storage Tank Environmental Accounting Fund.

(b) This determination shall be based upon legislatively-enacted budgets and the actual expenditures. [If a release requiring corrective action is confirmed from a tank system eligible for participation in this account, and the owner has interest in five (5) or fewer tanks, the eligible corrective action cost may be reimbursed from the cabinet's financial responsibility account, 401 KAR 42:280, or the petroleum storage tank account, 401 KAR 42:270, to be ranked pursuant to 401 KAR 42:290. To qualify, the owner shall file an application for assistance in accordance with 401 KAR 42:280 and shall adhere to the requirements of 401 KAR 42:280, 401 KAR 42:310 and 401 KAR 42:314.]

(5) If a release requiring corrective action is confirmed from a tank system eligible for participation in this account, and the owner has interest in five (5) to ten (10) tanks, the eligible corrective action cost may be reimbursed from the cabinet's financial responsibility account, 401 KAR 42:280, or the petroleum storage tank account, 401 KAR 42:270, ranked for priority in accordance with 401 KAR 42:290, Section 1(1)(b), or 401 KAR 42:290(6). To qualify, the owner shall file an application for assistance in accordance with 401 KAR 42:280 and shall adhere to the requirements of 401 KAR 42:280, 401 KAR 42:310 and 401 KAR 42:314.

(6) If obligations from this account exceed $3,000,000 during any fiscal year, the secretary may suspend further obligations from this account. The suspension shall be in effect until the secretary determines that further obligations from this account will not threaten the solvency of the fund.

(b) This determination shall be based upon:

1. Fund receipt and expenditures;
2. Audit reports;
3. Actuarial studies;
4. Projected revenues; and
5. Projections on the number of tanks to be removed.

(7) Obligations from this account shall cease on June 30, 2002.

Section 4. Application Procedure. (1) The owner shall file a completed SOTRA Application for Assistance*, DEP 6063, (August 14, 2006). Incorporated by reference in this administrative regulation 401-KAR-42-250, (Tank Removal Assistance form) for participation in this account at least forty-five (45) days prior to the permanent closure (removal) of the tank or tanks. The owner shall also provide the following information:

(a) Verification of income level by copies of the previous five (5) years' income tax returns;

(b) [A copy of the Notice of Intent to Permanently Close Underground Tank System, filed with the cabinet;]

(c) [A copy of the contract between the owner and the primary contractor (with a tank-closure person who has been certified) [approved by the State Fire Marshal];

(e) A site map delineating the facility boundaries and the location of all tank pits and areas to be impacted by the permanent
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closure [removal]; and
(d) [¶] Color photographs of the facility and the areas to be
impacted by the permanent closure [tank removal].

(2)(a) In response to the application submitted [Within 120
days of the receipt of a completed application], the cabinet shall
issue a letter setting forth the owner's eligibility status and the
availability of funding for the closure of the petroleum storage tank
[removal of the tank(s)].
1. He is eligible and stating the amount obligated for removal;
2. He is eligible but that no funds are available for the remain-
ing fiscal year;
3. The facility is not eligible for participation in this account.

(b) Permanent closure [Removal] of the tank system shall not be
began until the cabinet has approved the application and estab-
lished the reimbursable amount [on obligated]. Failure to comply
with this requirement shall result in denial of the reimbursement.

Section 5. Permanent Closure [Removal] Costs. (1)(a) Reim-
bursement from this account shall be determined from the lesser of two
(2) dollars per gallon of tank capacity [removed] or the following

<table>
<thead>
<tr>
<th>Number of Tanks in Pit</th>
<th>Size of Largest Tank in Pit (gallons)</th>
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<tbody>
<tr>
<td></td>
<td>Less than 3,100</td>
</tr>
<tr>
<td>1</td>
<td>$3,000</td>
</tr>
<tr>
<td>2</td>
<td>$4,900</td>
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<tr>
<td>3</td>
<td>$6,400</td>
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<tr>
<td>4</td>
<td>$7,900</td>
</tr>
<tr>
<td>5</td>
<td>$9,400</td>
</tr>
<tr>
<td>Each Extra Tank up to 10</td>
<td>$1,500</td>
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</table>

(b) In addition to the cost listed in subsection (1)(a) of this sec-
tion [above], the cabinet shall reimburse a one (1) time amount
which shall not exceed $2,000, for the preparation and submission
of a Closure Assessment Report, Incorporated by reference in
401 KAR 42-070. This shall include the cost of preparing a [facility]
classification guide(s), as required by the cabinet. The cabinet shall
also reimburse a one (1) time amount of $350 for the mobilization
and demobilization of equipment.

(c) If more than one (1) tank pit is located on a facility, the re-
imbursement shall be calculated by adding the matrix value given
for each pit, plus an amount allowed by subsection (3) of this sec-
tion.

(2) The following costs shall be included in the cost listed in
subsection (1)(a) of this section:
(a) Tank system removal, cleaning and disposal;
(b) Permanent closure [Removal] of twenty-five (25) feet of
associated piping outside of the tank pit;
(c) Removal of the pump island and canopy;
(d) Drumming and disposal of cleaning material;
(e) Backfilling to return the excavation to grade. Additional
demobilization may be reimbursed in accordance with subsection
(3) of this section;
(f) Concrete or asphalt surface removal;
(g) Equipment and material necessary for the permanent clos-
ure [removal of closure of tank system];
(h) Preparation of a permit if required for permanent closure or
tasking of a tank system [removal of testing];
(i) Excavation and loading of material,
(j) Collection of samples; and
(k) Labor charges relating to paragraphs (a) through (j) of this
subsection.

(3) The costs of the following items, if necessary, shall be added
to the cost established in subsection (1)(a) of this section,
subject to the amounts set forth in the "Contractor Cost Out-
line". (August 1, 2006), incorporated by reference in 401 KAR
42-250. Following items are not included in the cost matrix in sub-
section (1)(a) of this section. The cost, including labor, of these
items, if reasonable, may be added to the matrix value if necessary
to achieve closure:
(a) Surface replacement;
(b) Transportation, disposal and replacement of contaminated

backfill;
(c) Disposal of asphalt surface material;
(d) Installation of up to three (3) monitoring wells, as required
by 401 KAR 42-070 [to the extent required by law]. The cost of
additional wells may be allowed if the additional wells are required
in writing by the cabinet. An additional lump sum of $500 shall be
allowed for planning and reporting of the well installation and sam-
pling;
(e) Disposal or recycling of tank content or waste;
(f) Removal, transportation and off-site disposal of water, if
required by law; and
(g) Laboratory analysis, to the extent required, and by [law].

(b) Optional soil removal outside of the excavation zone in
accordance with Section 2.7 of the "Closure Outline", (August
January 2006), incorporated by reference in 401 KAR 42-070.

44. Cost[s] in this section shall be subject to the ranges set forth in 415 KAR 1:140.

Section 6. Claims. (1) To receive reimbursement, an owner shall
submit a completed "SOTRA Claim Request", DEP 6068,
(February 2006) [Claim Payment Request for Tank Removal] at
the time he receives a notice from the cabinet that:
(a) No further action is necessary;
or
(b) Corrective action is required.

(2) In addition to the completed claim form, the owner shall
submit the required documentation in accordance with the "Con-
tactor Cost Outline", (August January 2006), as incorporated by
reference in 401 KAR 42-250. In support of the request:
(a) The Closure Assessment Report;
(b) Original invoices in support of costs claimed under Section
5(3) of this administrative regulation, and
(c) A copy of the notice in subsection (1) of this section.

(3) The cabinet shall review a claim request for the following:
(a) The number and sizes of tanks removed; and
(b) Verification of eligible costs [prepare costs from Section 5(2)]
of the administrative regulation;
(c) The necessity and reasonableness of costs claimed under
Section 5(3) of this administrative regulation.

(4) To receive reimbursement, an owner shall [must] have paid all
annual tank fees as required by KRS 224 60-150.

(5) The cabinet may [shall] request additional supporting
documentation [if necessary] to verify the reasonableness or ne-
cessity of a cost.

(6) Reimbursement shall be based upon a determination by the
bureau that the report required is complete and meets the
requirements of 415 KAR 1:42.

(5) If circumstances necessitate the closure in place of a tank,
rather than its removal, the cost incurred may be reimbursed. The
owner bears the burden of showing the necessity and cost-effec-
tiveness of closure in place versus tank removal.

Section 7. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
(a) "SOTRA Application for Assistance", DEP 6067, (August
January 2006), and
(b) "SOTRA Claim Request", DEP 6068, (January 2006) [Ap-
Protection and Regulation Cabinet,
(b) Claim Payment Request for Tank Removal, (October 1998),
Public Protection and Regulation Cabinet.

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Underground Storage Tank
Branch, 81 C. Michael Davenport Boulevard, Frankfort, Kentucky
40601, Monday through Friday, 8 a.m. to 4:30 p.m. during state
holidays, and may also be obtained on the Division of Waste Man-
agement's Web page located at www.waste-ky.gov

JOHN W. CLAY, Deputy Secretary
For LAJUANA WILCHER, Secretary
APPROVED BY AGENCY: July 12, 2006
FILED WITH LRC: July 13, 2006 at 4 p.m.
CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email
Section 1. An entity shall be subject to financial audit if it is an entity described in KRS 224.60-130(1)(a) (6)(h). Section 2. Financial Audit Policy and Procedure. (1) The cabinet shall audit an entity if: (a) A document is required to submit to the cabinet appears to be fraudulent; or (b) There is evidence or other reason to believe that the entity has violated a federal or state law or regulation related to its actions under the fund. (2) A record shall be subject to financial audit if it is described in KRS 224.60-130(1)(k) (5)(k). Section 3. Improper Use of Reimbursements [Fund Reimbursements]: (a) If the audit by the cabinet finds an improper, irregular, or illegal use of money received directly or indirectly from the cabinet [fund], or that the money was obtained by fraud or misrepresentation, the cabinet shall report the results of the audit to the proper authorities for civil and criminal investigation. (b) If the subject of the audit is certified pursuant to 401 KAR 42:316, and the audit conducted by the cabinet finds improper, irregular, or illegal use of money received directly or indirectly from the cabinet [fund], or that the money was obtained by fraud or misrepresentation, the cabinet shall immediately revoke the certification in accordance with 401 KAR 42:314, Section 8 (7), or 401 KAR 42:316, Section 4 (5) (3). (3) Failure by an owner or operator to allow an audit shall result in the revocation of that certification. Reimbursements [Fund-money-paid] to that person, pursuant to a contract for a corrective action service, shall be subject to recovery by the cabinet.
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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, August 8, 2006)

501 KAR 6:999. Corrections secured policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or 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 secure policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Secured Policies and Procedures, August 8, 2006 (242/06),", are incorporated by reference. Secured Policies and Procedures include:

BCC 08-04-02 Immediate Release of Inmates from Locked Areas (Amended 1/12/05)
BCC 09-04-01 Construction Crew Entry, Exit and Regulations (Amended 1/12/05)
BCC 09-04-02 Complex Entry and Exit (Amended 1/12/05)
BCC 09-05-01 Key Control (Amended 1/12/05)
BCC 09-06-02 Transportation to Courts (Amended 1/12/05)
BCC 09-07-01 Drug Abuse and Intoxicants Testing (Amended 1/12/05)
BCC 09-08-01 Weapons and Related Security Device Control (Amended 1/12/05)
BCC 09-09-02 Use of Restraints (Amended 1/12/05)
BCC 09-17-01 Institutional Supervisor Inspections (Amended 1/12/05)
BCC 09-20-01 Inmate Death (Amended 1/12/05)
BCC 09-21-01 Tool Control (Amended 1/12/05)
BCC 09-22-01 Emergency Power and Communication System
BCFC 09-01-01 Bell County Forestry Camp's Institutional Emergency Plan
BCFC 08-09-02 OSHA Hazard Communication Program
BCFC 08-10-01 Bell County Forestry Camp Emergency Response Team
BCFC 09-07-01 Key Control
BCFC 09-11-01 Guidelines for Contractors
BFCF 09-15-01 Control of Drugs [Preceded] and Regulation of Inmate Movement (Amended 12/14/05)
BCFC 09-16-01 Inmate Death
BCFC 09-19-01 Tool Control (Amended 12/14/05)
BCFC 09-20-01 Weapons, Chemical Agents, and Related Security Device Control
BCFC 09-21-01 Transportation of Inmates
CPP 8.3 Critical Incident Planning (Amended 2/13/06)
CPP 8.4 Critical Incident Management (Amended 2/13/06)
CPP 8.5 Emergency Squads (Amended 1/12/05)
CPP 9.1 Use of Force and Mechanical Restraints (Amended 9/14/05)
CPP 9.3 Security Threat Groups (Amended 12/14/05)
CPP 9.7 Storage, Issue, and Use of Weapons Including Chemical Agents (Amended 12/14/05)
CPP 9.9 Transportation of Offenders (Amended 1/12/05)
CPP 9.10 Security Inspections (Amended 1/12/05)
CPP 9.11 Tool Control (Amended 12/14/05)
FCDC 09-01-02 Institutional Entry and Exit Surveillance and Perimeter Security Procedures
FCDC 09-01-03 Firearms, Mechanical Restraints, and Emergency Equipment
FCDC 09-03-01 Control and Accountability of Flammable,
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FCDC 09-07-01 Toxic, Caustic and Other Hazardous Materials Guidelines for Contract and Construction Personnel

FCDC 09-09-01 Tool Control

FCDC 09-12-01 Key Control

FCDC 09-14-01 Count Procedures

FCDC 09-20-01 Collection, Preservation, and Identification of Physical Evidence

GRCC 08-03-01 Escape Plan (Amended 1/12/05)

GRCC 08-05-01 Emergency Squad: Selection, Training and Evaluation (Amended 1/12/05)

GRCC 08-07-01 Natural Disaster or Earthquake (Amended 1/12/05)

GRCC 09-05-01 Construction Crew Entry and Exit Guidelines (Amended 1/12/05)

GRCC 09-06-01 Entry and Exit Procedures (Amended 1/12/05)

GRCC 09-07-01 Institutional Inspections (Amended 1/12/05)

GRCC 09-08-01 Issuance of Weapons, Ammunition and Chemical Agents (Amended 1/12/05)

GRCC 09-09-01 Contraband Control; Collection, Preservation, Disposition of Contraband and Identification of Physical Evidence (Amended 1/12/05)

GRCC 09-10-01 Emergency Release from Locked Areas (Amended 1/12/05)

GRCC 09-11-01 Tool and Equipment Control (Amended 1/12/05)

GRCC 09-12-01 Key Control (Amended 1/12/05)

GRCC 09-15-01 Radio Assignment (Amended 1/12/05)

[KGW 08-01-04] Institutional — Emergency — Plan — (Amended 1/12/05)

[KGW 08-01-04] Corrections Emergency Response Team (CERT) [Squad E-Squad] (Amended 6/14/05 [1/10/06])

[KGW 09-01-04] Inmate Counts (Amended 6/14/06 [1/12/06])

[KGW 09-01-04] Transportation of Inmates (Amended 6/14/06 [1/12/06])

[KGW 09-02-01] Use of Restraints (Amended 6/14/06 [1/10/06])

[KGW 09-03-01] Use of Force (Amended 6/14/06 [1/10/06])

[KGW 09-03-02] Weapons and Chemical Agents (Amended 6/14/06 [1/10/06])

[KGW 09-03-03] Forced Cell Entry in a Housing Unit or Special Management Unit (SMU) (Amended 6/14/06 [1/10/06])

[KGW 09-04-01] Portable Radios and Mobile Units (Amended 6/14/06 [1/12/06])

[KGW 09-06-01] Tool Control (Amended 6/14/06 [1/12/06])

[KGW 09-06-02] Key Control (Amended 6/14/06 [1/12/06])

[KGW 09-06-03] Flammable, Hazardous, Toxic and Caustic Materials (Amended 6/14/06 [1/12/06])

[KGW 09-07-01] Video Security Inspections - CCTV Security Devices (Amended 6/14/06 [1/12/06])

[KGW 09-07-03] Quarterly Security Inspections (Amended 6/14/06 [1/12/06])

[KGW 09-09-01] Penmeter Security Plan and Daily Inspections (Amended 6/14/06 [1/12/06])

[KGW 09-12-01] Collection, Preservation and Identification (Amended 6/14/06 [1/12/06])

[KGW 09-15-04] Post-One-and-Sallyport-Post-Four (Amended 4/12/06)

KSP 08-02-05 Storage of Flammables and Dangerous Chemicals and Their Use (Amended 1/12/05)

KSP 08-03-01 Emergency Plans and General Policy (Amended 1/12/05)

KSP 08-03-02 General Procedures and Plans for Riots and Disturbances (Amended 1/12/05)

KSP 08-03-03 Master Riot Control Plan (Amended 1/12/05)

KSP 08-03-04 Hostage Plans (Amended 1/12/05)

KSP 08-03-05 Work Slowdown, Work Stoppage, Work Strikes, by Correctional Employees (Amended 1/12/05)

KSP 08-03-06 Escape Procedure (Amended 1/12/05)

KSP 08-03-07 Bomb Plans (Amended 1/12/05)

KSP 08-03-08 Corrections Emergency Response Team (Amended 1/12/05)

KSP 09-01-01 Use of Force (Amended 1/12/05)

KSP 09-07-01 Weapons Control (Amended 1/12/05)

KSP 09-08-01 Searches and Preservation of Evidence (Amended 1/12/05)

KSP 09-09-01 Transportation of Inmates (Amended 1/12/05)

KSP 09-10-01 Institutional Security Inspections (Amended 1/12/05)

KSP 09-10-02 Security Inspection Guidelines for Cellhouse Officers (Amended 1/12/05)

KSP 09-11-01 Tool Control (Amended 1/12/05)

KSP 09-12-01 Key Control (Amended 1/12/05)

KSP 09-13-05 Outside Hospital Duty, Inpatient and Outpatient Care for Inmates (Amended 1/12/05)

KSP 09-14-01 Count Procedures (Amended 1/12/05)

KSP 09-15-01 Entry and Exit Procedures (Amended 1/12/05)

KSP 09-15-04 Institutional Limited Access (Amended 1/12/05)

KSR 08-01-01 Control of Flammable, Hazardous, Toxic and Caustic Chemical and Materials (Amended 6/14/05)

KSR 08-01-02 Corrections Emergency Response Team (Amended 12/14/05)

KSR 08-01-03 Emergency Medical Transportation (Amended 8/9/05)

KSR 08-01-04 Escape Response Procedure

KSR 09-00-04 Box 1 Entry and Exit Procedure (Amended 8/9/05)

KSR 09-00-09 Contraband, Dangerous Contraband and Search Policy (Amended 6/14/05)

KSR 09-00-27 Construction Crew Entry and Exit (Amended 8/9/05)

KSR 09-01-01 Count Procedures (Amended 6/14/05)

KSR 09-01-02 Gate 1 Entrance and Exit Procedure (Amended 8/9/05)

KSR 09-01-03 Tunnel Gate Entrance and Exit Procedure

KSR 09-01-04 Outside Stockade Gate (Box 01)

KSR 09-01-05 Tool Control

KSR 09-01-06 Security Inspection Plan

KSR 09-01-07 Key Control

KSR 09-01-08 Issuance of Firearms and Chemical Weapons From Arms Vault

KSR 09-01-09 Officers Daily Housing Security and Safety Log, Security Index, Correctional Security Guide and Post Orders

KSR 09-01-10 Issuance of Institutional Portable Radios

KSR 09-01-11 Transportation of Inmates

KSR 09-01-12 Collection, Preservation and Identification of Physical Evidence

KSR 09-01-13 Forced Cell Move in Medium or Maximum Area

KSR 10-01-01 Special Management - Behavior Problem Control

LLCC 08-03-01 Emergency Squad: Selection, Training and Evaluation (Amended 3/8/05)

LLCC 09-01-02 Priority Posts and Emergency Security Posts Assignments for Daily Operation (Amended 3/8/05)

LLCC 09-06-01 Central Control Center Operating Procedure (Entry Into Institutional Compound) (Amended 6/14/05 [6/14/06])

LLCC 09-07-01 Count Procedure and Documentation (Amended 6/14/06 [6/14/06])

LLCC 09-08-01 Regulation of Inmate Movement (Amended 3/8/05)

LLCC 09-08-02 Unit Security and Emergency Procedure (Amended 3/8/05)

LLCC 09-09-01 Transportation of Inmates - Entry and Exit Procedures (Amended 3/8/05)

LLCC 09-09-02 Entry and Exit Control (Amended 3/8/05)

LLCC 09-11-01 Standards for Maintaining Perimeter Security (Amended 6/14/05 [6/14/06])

LLCC 09-11-04 Outside Detail (Amended 1/12/05)

LLCC 09-12-02 Monitoring Staff and Visitors Movement (Amended 3/8/05)
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LLCC 09-13-01 Outside Hospitals (Amended 1/12/05)
LLCC 09-14-01 Security Procedures for Print Shop (Amended 1/12/05)
LLCC 09-15-01 Emergency Radiologic Response (Amended 3/8/05)
LLCC 09-17-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power (Amended 3/8/05)
LLCC 09-18-04 Monitoring of Inmate Telephone Calls (Amended 1/12/05)
LLCC 09-20-01 Weapons and Related Security Device Control (Amended 3/8/05)
LLCC 09-20-02 Key Control (Amended 3/8/05)
LLCC 09-20-03 Tool and Equipment Control (Amended 3/8/05)
LLCC 09-21-03 Cell Entry in a Dorm or Special Management Unit (Amended 1/12/05)
LLCC 09-22-01 Application of Restraints (Amended 3/8/05)
LLCC 09-24-01 Woody Inception and Maintenance of All Security Devices (Amended 1/12/05)
LSCC 08-03-01 Escape Plan (Added 6/14/06)
LSCC 08-05-01 CERT: Selection, Training, and Evaluation (Added 1/12/05)
LSCC 09-05-01 Construction Crew: Entry and Exit Guidelines (Amended 8/8/06/Added 6/14/06)
LSCC 09-06-01 Entry and Exit Procedures (Added 8/8/06/Added 6/14/06)
LSCC 09-07-01 Institutional Inspections (Added 8/8/06/Added 6/14/06)
LSCC 09-08-01 Issuance of Weapons Ammunition and Chemical Agents (Added 8/8/06/Added 6/14/06)
LSCC 09-09-01 Contingency Control, Collection, Preservation, and Disposition of Physical Evidence (Added 8/8/06/Added 6/14/06)
LSCC 09-11-01 Tool and Equipment Control (Added 6/14/06)
LSCC 09-12-01 Key Control (Amended 8/8/06/Added 6/14/06)
LSCC 09-15-01 Radio Assignment (Added 6/14/06)
NTO 09-05-04 Storage of Flammables and Dangerous Chemicals and Their Use (Amended 1/12/05)
NTO 09-01-02 Escape By Air
NTO 09-02-01 Regulation of Inmate Movement
NTO 09-04-01 Construction and Service Personnel (Amended 1/12/05)
NTO 09-05-01 Count Procedure and Documentation (Amended 1/12/05)
NTO 09-06-01 Issuance and Use of Institution Portable Radios (Amended 1/12/05)
NTO 09-09-01 Transportation of Inmates (Amended 1/12/05)
NTO 09-10-01 Use of Force; Prohibiting Physical Abuse and Corporal Punishment
NTO 09-10-02 Use of Physical Restraints (Amended 1/12/05)
NTO 09-11-01 Tool Control
NTO 09-13-01 Procedure for Operation in the event of Dense Fog and Loss of Power
NTO 09-17-01 Maintaining Perimeter Security (Amended 1/12/05)
NTO 09-17-02 Perimeter Security Check
NTO 09-18-01 Key Control (Amended 1/12/05)
NTO 09-19-01 Electrical Disabling Devices (Amended 1/12/05)
NTO 09-20-01 Security Inspection Plan
NTO 09-21-01 Inclement Weather Operations
NTO 09-25-01 Weapons and Related Security Device Control (Amended 1/12/05)
NTO 09-25-02 Use of Chemical Agents (Amended 1/12/05)
NTO 09-25-01 Personal Firearms Owned by Employees Residing on Institutional Property
NTO 09-30-01 Security Check-In List Procedures (Added 1/12/05)
RCC 08-03-01 Escape Procedures (Amended 1/12/05)
RCC 08-08-01 Control and Use of Flammable, Toxic, and Caustic Materials (Amended 1/12/05)
RCC 08-09-01 Institutional Emergency Plan (Amended 1/12/05)
RCC 09-01-01 Establishment of Security Posts (Amended 1/12/05)
RCC 09-01-02 Mandatory Security Post Coverage (Amended 1/12/05)
RCC 09-02-01 Security Activity Logs (Amended 1/12/05)
RCC 09-03-01 Institutional Security Inspections (Amended 1/12/05)
RCC 09-04-03 Duties and Responsibilities of the Fire and Safety Officer
RCC 09-05-01 Entry and Exit to Institution (Amended 1/12/05)
RCC 09-06-01 Search Protocol/Dispossession of Contraband (Amended 1/12/05)
RCC 09-06-02 Collection, Preservation, and Identification of Physical Evidence (Amended 1/12/05)
RCC 09-06-04 Disposition of Contraband from Outside Institutional Perimeter (Amended 1/12/05)
RCC 09-07-01 Key Control (Amended 1/12/05)
RCC 09-11-01 Guidelines for Contractors (Amended 1/12/05)
RCC 09-12-01 Outside Hospital Security (Amended 1/12/05)
RCC 09-13-01 Outside Details and Farm Details (Amended 1/12/05)
RCC 09-14-01 Restricted Areas (Amended 1/12/05)
RCC 09-14-02 Count Procedure and Documentation (Amended 1/12/05)
RCC 09-15-02 Security and Records Office Documentation for Placement and Movement of Inmates (Amended 1/12/05)
RCC 09-15-03 Regulation of Inmate Movement (Amended 1/12/05)
RCC 09-16-01 Inmate Death (Amended 1/12/05)
RCC 09-17-01 Recreational Area Security and Recreation Field (Amended 1/12/05)
RCC 09-19-01 Tool Control (Amended 1/12/05)
RCC 09-20-01 Weapons and Related Security Device Control (Amended 1/12/05)
RCC 09-20-03 Issuance of Firearms and Chemical Weapons from the Armory (Amended 1/12/05)
RCC 09-21-01 Transportation of Inmates (Amended 1/12/05)
RCC 09-22-02 Use of Electronic Riot Shield (Amended 1/12/05)
RCC 09-23-01 Use of Restraints (Amended 1/12/05)
RCC 09-25-01 Procedure for Operation in Inclement Weather (Amended 1/12/05)
RCC 09-26-01 Use of State Vehicles and Staff Owned Vehicles (Amended 1/12/05)
WKCC 08-03-01 Emergency Planning (Amended 1/12/05)
WKCC 08-04-01 Escape (Amended 12/14/05)
WKCC 08-04-02 Riots and Disturbances (Amended 12/14/05)
WKCC 08-04-03 Hostage (Amended 1/12/05)
WKCC 08-04-04 Hunger Strike (Amended 1/12/05)
WKCC 08-04-05 Inmate Work Stoppages (Amended 1/12/05)
WKCC 08-04-06 Hazards of Material Spill (Amended 12/14/05)
WKCC 08-04-07 Natural Disaster and Adverse Weather (Amended 1/12/05)
WKCC 08-04-08 Food Poisoning (Amended 1/12/05)
WKCC 08-04-09 Bomb Threat (Amended 1/12/05)
WKCC 08-04-10 Employee Work Slow-Down, Stoppage, or Strikes (Amended 1/12/05)
WKCC 08-05-01 Corrections Emergency Response Team (Amended 12/14/05)
WKCC 09-00-02 Radio Communication (Amended 1/12/05)
WKCC 09-00-03 Video Equipment (Amended 12/14/05)
WKCC 09-00-04 LINKNCIC Security (Amended 1/12/05)
WKCC 09-07-01 Weapons, Chemical Agents, and Related Security Equipment (Amended 12/14/05)
WKCC 09-08-01 Searches and Preservation of Evidence (Amended 1/12/05)
WKCC 09-09-01 Transportation of Inmates (Amended 1/12/05)
WKCC 09-10-01 Security Inspection and Staff Accessibility (Amended 1/12/05)
WKCC 09-13-02 Post Logs (Amended 1/12/05)
WKCC 09-14-01 Counts (Amended 1/12/05)
WKCC 09-15-01 Inmate Movement, Entry & Exit, and Perimeter Control (Amended 1/12/05)

(2) There shall not be a public hearing on these policies and procedures as they are secured policies under the provisions of
This CDL skills test shall be retaken every four (4) years at the direction of KSP; and
(8) Shall give written consent to KSP to conduct a Kentucky criminal history records check, and further give written consent to an updated Kentucky criminal history records check being performed every four (4) years. Persons who are determined to have felony or misdemeanor convictions involving violence, dishonesty, or moral turpitude may be rejected for appointment, or have their appointment as a third-party CDL skills test examiner revoked, based upon a case-by-case discretionary consideration of the facts and circumstances surrounding the conviction.

Section 3. Third-Party CDL Skills Test Examiner Mandatory Training Requirements. (1)(a) Except as provided in paragraph (b) of this subsection, persons appointed as a third-party CDL skills test examiner shall successfully complete the initial forty (40) hour CDL skills test examiner training conducted by KSP and pass all exams associated with the training. This training shall be approved by AAMVA and FMCSA. Certification of completion shall be issued by KSP upon successful completion of this training;
(b) Persons who have previously administered CDL skills tests for KSP and who have completed the training within the past two (2) years shall be waivered from the initial requirement;
(2) Three-party skills test examiners shall attend and successfully complete an annual ten (10) hour in-service training conducted by KSP.
(3) Third-party skills test examiners shall participate in the certification process for CDL examiners administered through AAMVA. This certification shall be sought and maintained through KSP. It shall be the responsibility of the third-party skills test examiner to pay all fees charged by AAMVA to obtain and maintain this certification. Failure to obtain this certification within two (2) years from the date of appointment as a third-party CDL skills test examiner shall be grounds for revocation of appointment.
(4) Third-party CDL skills test examiners shall be issued identification cards, and a unique examining identification number that identifies them as a CDL examiner and shall be carried and produced upon request of KSP. The examining identification number shall be recorded by the third-party CDL skills test examiner on all CDL examination reports and related documents required by KSP to be completed by the examiner in the course of their duties.
(5) Third-party CDL skills test examiners shall conduct CDL skills tests in uniform approved by KSP. KSP shall not be responsible for the purchase or maintenance costs for this uniform.

Section 4. Additional CDL Skills Test Requirements. (1) Third-party skills tests examiners shall comply with 49 C.F.R. § 383.75, Subparts G and H.
(2) Third-party CDL skills test examiners shall, without deviation, administer the CDL skills test in accordance with the KSP Driver Testing Branch CDL Examiners Manual.
(3) Third-party CDL skills test examiners shall record the CDL applicants skills test scores.
(4) Third-party CDL skills test examiners shall be required to keep and maintain files pertaining to CDL tests that they have administered for a period of two (2) years. These records shall be subject to inspection by KSP or any other state or federal entity performing an audit of these records.
(5) Third-party skills test examiners shall be subject annually to at least two (2) check rides performed by an official observer who, at the direction of KSP, shall ride with the examiner and observe the CDL skills test as it is given to ensure the examiner is administering the test in full compliance with all federal and state laws and administrative regulations.
(6) Third-party CDL skills test examiners shall be subject to "select tests" conducted by KSP. These tests shall consist of the CDL applicant being selected not later than two (2) days following the original administration of the third-party CDL skills test examiner utilizing commercial vehicle equipment provided by or on behalf of the CDL skills test applicant at no cost to KSP. The test results shall then be compared to verify that there are no deficiencies with the original test given by the third-party CDL skills test examiner. If the two (2) test scores differ, making a difference

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as to whether the CDL applicant passed or failed, the score given by KSP on its test shall be entered into the official record as the actual score of the CDL applicant.

(7) Third-party CDL skills test examiners shall be subject to random inspection testing by KSP or FMCSA. These tests may consist of the third-party CDL skills test examiner administering a CDL skills test to a CDL applicant who is an agent of KSP or FMCSA without the examiner’s knowledge of the individual’s true identity.

(8) Third-party CDL examiners shall be subject to monitoring of their testing processes by KSP or FMCSA to ensure compliance with all federal and state laws and administrative regulations.

Section 5. Prohibited Conflicts of Interest. (1) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant who is a family member or who has received commercial truck driving instruction training at a commercial truck driving school that is owned or operated by a family member.

(2) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant with whom the examiner is involved in a dating, romantic, or other type of intimate personal relationship, regardless of whether the examiner and applicant marry or remain together.

(3) When provided in paragraph (b) of this subsection, a third-party CDL skills test examiner who administers CDL skills tests under a contractual agreement with KSP and who is a parent or former commercial truck driving school employee, shall not administer third-party CDL skills test exams to any CDL applicant who has attended a commercial truck driving school as a student of the examiner’s present or former employee.

(b) Once a third-party CDL skills test examiner has ceased employment with a commercial truck driving school for at least one (1) year, the examiner may be authorized to administer CDL skills test exams to CDL applicants who are commercial truck driving students of their former employer, if KSP, in its sole discretion, determines that the examiner can administer the exam in a fair, unbiased, and impartial manner as prescribed by the FMCSA, 49 C.F.R., Parts 383 and 384.

Section 6. Revocation of Appointment. Failure to comply with the requirements of this administrative regulation shall be grounds for revocation of appointment as a third-party CDL skills test examiner by KSP and shall further constitute good cause for termination of KSP’s contractual obligations with examiners who administer CDL skills test pursuant to contract.

Section 7. Third-Party CDL Skills Test Examiner Records. All records pertaining to selection and appointment of third-party CDL skills test examiners shall be maintained by KSP. These records shall be reviewed prior to renewing CDL third-party CDL skills test examiner appointment, whether by Memorandum of Agreement with DOE or contractual agreement with other third-party CDL skills test examiner. Third-party CDL skills test examiner records shall contain the following information:

(1) Copy of qualification questionnaire containing photo of individual;

(2) Copy of DOE Memorandum of Agreement (if applicable);

(3) Copy of criminal history and driving record;

(4) All other documents related to the qualification and requirements of the examiner; and

(5) Any investigations, select testing and covert testing, or monitoring conducted by KSP concerning the third-party CDL skills test examiner.

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

(a) "KSP Driver Testing Branch CDL Examiners Manual. Version 2.0. The manual is produced by AAMVA; and

(1) "Arm’s-length relationship" means the condition of the parties to a transaction in which:

(a) Each has independent interests;

(b) The parties have not had a business or employment relationship within the past twelve (12) months; and

(c) The parties are not related to each other, either as persons who are married, ancestors, descendants, brothers or sisters including blood relationships whether the whole or half blood without regard to legitimacy, relationship of parent and child by adoption, relationship of stepparent and stepchild, and those relationships of the second degree.

(2) "CDL" means a commercial driver license.

(3) "Family member" means spouse, including a former spouse, and children, as well as a person who is related to a third-party examiner as any of the following: whether by blood or adoption, parent, brother, sister, grandmother, child, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or a person with whom a romantic relationship is shared regardless of co-habitation.

(4) "KCTCS" means the Kentucky Community and Technical College System.

Section 3. Application for Authorization. Examinees for the skills test portion for a commercial driver license (CDL) shall be required to pass the test given to employees of the Kentucky State Police, employees of the Kentucky Community and Technical College System (KCTCS) for truck driving school and employees of the Department of Education, Division of Pupil Transportation for school bus drivers. The application process shall be as follows:

(1) For school bus examiner, examinees shall be selected from certified school bus driver-trainees and recommended to the Kentucky State Police-Driver Testing Branch by the Division of Pupil Transportation.

(2) For KCTCS examiner, application shall be made to KCTCS and shall be considered approved by the Kentucky State Police-Driver Testing Branch. Applicants for examiners in the KCTCS program shall have an arm’s-length relationship with any owner, officer, or employee of any program offering commercial truck driving under the KCTCS or a proprietary school licensed under KRS Chapter 166A.

(3) To be qualified as a commercial driver license third-party examiner, all applicants shall be required to pass (a) through (d) from their driving record and shall have the following:

(a) Examinees shall be required to have a high school diploma or GED;

(b) Examinees shall have a commercial driver license for the vehicle class of which they will be testing and all available endorsements, excluding the passenger endorsement unless the examinee will be testing those applicants seeking a passenger endorsement. Maintenance of license shall be the responsibility of each third-party CDL examiner;

(c) Examinees shall pass one (1) complete battery of forms A, B, or C from the commercial driver license knowledge test administered by the Kentucky State Police-Driver Testing Branch. These tests shall be taken every four (4) years at the direction of the Kentucky State Police-Driver Testing Branch;

(d) Examinees shall pass the skills test administered by the Kentucky State Police-Driver Testing Branch in a vehicle in which they will test applicants. These tests shall be taken every four (4) years at the direction of the Kentucky State Police; and

(e) Examinees shall have a complete fingerprint-based criminal history check performed every four (4) years at the direction of the Kentucky State Police.

(4) The Kentucky State Police-Driver Testing Branch shall approve examinees. A criminal history check revealing a lack of good moral character, dishonesty, or felony conviction shall be considered grounds for dismissal from the CDL Examiner Program after investigation and consideration by the Kentucky State Police. In making the determination of good moral character, under the section, the Kentucky State Police shall consider only the following:

(a) If the applicant has been convicted of a crime;

(b) The age of the applicant at the time any criminal conviction was entered;

(c) The length of time that has elapsed since the applicant's last criminal conviction; and

(d) The relationship of any crime convicted to the ability of the applicant to be a third-party CDL examiner.

Section 3. Issuance of Authorization. Upon selection for com-
merial driver license examiner, examiners shall be required to do the following:

(1) Examiners shall successfully complete the initial forty (40) hours of CDL Examiner Training conducted by the Kentucky State Police and pass all exams associated with the training unless waived by the Kentucky State Police due to prior training and experience. This training shall be approved by the American Association of Motor Vehicle Administrators (AAMVA) and Federal Motor Carrier Safety Administration (FMCSA).

(2) Examiners shall attend and successfully complete a yearly ten (10) hour in-service training conducted by the Kentucky State Police.

(3) Examiners shall participate in the certification process for certified commercial examiners through the American Association of Motor Vehicle Administrators (AAMVA). Certification shall be sought and maintained through the Kentucky State Police Driver Testing Branch for certification with AAMVA. This section shall apply when the AAMVA certification program is implemented.

(4) The Kentucky State Police Driver Testing Branch shall enter into a memorandum of authorization and agreement with KCTCS as to conditions and requirements to individual third-party CDL examiners. This memorandum of agreement shall be terminable by the Kentucky State Police or test center based on an investigation by the Kentucky State Police and a finding that the agreement had been violated.

(5) Examiners shall be issued certificates of completion of the required forty (40) hours of examiner training by the Kentucky State Police Driver Testing Branch.

(6) Examiners shall be issued identification cards that identify them as commercial license examiners, which shall be carried and produced upon request of the Kentucky State Police or as designated.

(7) Examiners shall be issued a CDL third-party examiner number, which shall be used on reports produced by the examiner and the Kentucky State Police Driver Testing Branch.

(8) Examiners shall have readily recognizable identification on their uniform and a nameplate on their uniform that identifies the examiner and their name shall be on the uniform to readily identify the examiner. The identification shall not associate the examiner with being an employee of the Kentucky State Police. A uniform committee, consisting of members of KCTCS and KSP, shall be implemented to establish the uniform requirements for the examiners.

Section 4: Skills Test Requirements. Persons authorized to administer commercial driver license skills tests shall be subject to the following additional requirements:

(1) Administration of skills tests shall comply with 49 C.F.R. 383.76. Subparts G and H of the Department of Transportation Federal Highway Administration Federal Motor Carrier Safety Regulations.

(2) Examiners administering the skills tests shall, without deviation, administer the test in accordance with the Kentucky State Police Driver Testing Branch CDL Examiners Manual. The manual is produced by the American Association of Motor Vehicle Administrators (AAMVA) and is incorporated by reference.

(3) Examiners administering the skills portion of CDL tests shall record the scores on a CDL Skills Test Recording Form and shall, immediately following the test, call the Driver Testing Branch of the Kentucky State Police and report the scores given to the person tested. The CDL Skills Test Reporting Form is incorporated by reference.

(4) Examiners shall be required to keep and maintain files pertaining to CDL tests that they have administered for a period of two (2) years. These records shall be subject to inspection by the Kentucky State Police or its designee.

(5) Examiners shall be subject to at least two (2) check rides annually by a designee of the Kentucky State Police Driver Testing Branch, who shall ride with the examiner and observe the test as it is given to ensure compliance with all federal and state laws and administrative regulations.

(6) Examiners shall be subject to "Select Tests" conducted by the Kentucky State Police. These tests shall consist of the applicant being retested not later than two (2) days following the original

tests of the third-party CDL examiner, utilizing equipment provided by the commercial truck driving school, at no cost to the Kentucky State Police. The test results from each test shall then be compared to verify that there are no deficiencies with the original test given by the third-party examiner. Should the two (2) test scores differ, making a difference whether the applicant passed or failed, the score given by the Kentucky State Police shall be entered into the official record as the actual score of the applicant.

(7) Examiners shall be subject to testing by the Kentucky State Police or Federal Motor Carrier Safety Administration. These tests shall consist of the third-party CDL examiner testing an individual who is an agent of the Kentucky State Police or the FMCSA without the examiner's knowledge of the individual's true identity.

(8) Third-party CDL examiners shall be subject to monitoring of their testing processes by the Kentucky State Police or the Federal Motor Carrier Safety Administration to ensure compliance with all federal and state laws and administrative regulations.

Section 5. (1) A third-party examiner shall not administer CDL skills test to any present or former family member or at any school owned or operated by a family member, or former family member.

(2) An examiner or former truck driving school employee, whether proprietor or otherwise, shall not administer third-party CDL skills examinations to any student of their present or former employer. Once a CDL school employee has been unemployed by a trucking school for at least one (1) year, they may then be authorized to administer third-party CDL skills examinations to students of their former employer, if it is believed that they can do so in a fair, unbiased and legal manner as provided by the Federal Motor Carrier Safety Administration regulations, 49 C.F.R. Parts 383 and 384. KCTCS third-party examiners may administer CDL skills test at other KCTCS locations where they have not worked as an employee in the last year.

Section 6. All students who attend a Kentucky professional truck driving school, licensed by the Kentucky Board for Proprietary Trade Schools, shall take their commercial driver license skills test from a licensed third-party examiner employed by the Kentucky Community and Technical College System. KCTCS may charge a fee for the administration of the test or tests. In an emergency situation, KCTCS may request that the Kentucky State Police administer a CDL test, or tests, in lieu of a KCTCS employee, to a student of a professional truck driving school.

Section 7. Processing and Filing. All files pertaining to application or reapplication to be a commercial driver license examiner shall be maintained by the Kentucky State Police Driver Testing Branch. These files shall be reviewed at each renewal period, prior to renewing agreements and authorization. Files on each examiner shall contain the following:

(1) Copy of application containing photo of individual.

(2) Copy of memorandum of authorization and agreement.

(3) Copy of criminal history and driving record.

(4) All other documents related to the qualification and requirements of the examiner.

(5) Any investigations, select testing and covert testing, or monitoring conducted on the Kentucky State Police on the CDL examiner.

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

(a) Kentucky State Police Driver Testing Branch CDL Examiner Manual, Version 2.0. The manual is produced by the American Association of Motor Vehicle Administrators (AAMVA); and

(b) CDL Skills Test Reporting Form, July 2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Custodian of Records, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BG NORMAN M. ARFLACK, Secretary
MARK MILLER, Commissioner
APPROVED BY AGENCY: June 13, 2005
FILED WITH LRC: June 15, 2005 at 10 a.m.
VOLUME 33, NUMBER 3 — SEPTEMBER 1, 2006

EDUCATION CABINET
Kentucky Board of Education

(As Amended at ARES, August 8, 2006)

704 KAR 3:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1)(a), (c), 156.645, 156.6451
STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate [adopt] administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The content standards for the courses of study are described in the program of studies, 704 KAR 3:303. This administrative regulation establishes the minimum requirements necessary for enrollment to a high school diploma, including the requirements beginning with the graduating class of 2012 [2006].

Section 1. Until the graduating class of 2012 [2006], each student in a common school shall complete an individual learning plan which incorporates emphasis on career development and shall have a total of at least twenty-two [22] [twenty-six (26)] credits for high school graduation. Those credits shall include the following minimum requirements:

1. Language arts: Four (4) credits (including English I, II, III, and IV [IV]):
   - Social studies: three (3) credits (to incorporate U.S. History, Economic, Government, World Geography, and World Civilization; [2 (including one (1) credit in U.S. History)];
   - Mathematics: three (3) credits (including Algebra I, Geometry, and one (1) elective as provided in the program of studies, 704 KAR 3:303 [3];
   - Science: three (3) credits (including life science, physical science, and earth and space science as provided in the program of studies, 704 KAR 3:303 [3];
   - Health: one-half (1/2) credit [1/4];
   - Physical education: one-half (1/2) credit [1/2];
   - History and appreciation of visual and performing arts (for another arts course which incorporates this content): one (1) credit; and
   - Electives: seven (7) credits [6].

Section 2. ([44]) Beginning with the graduating class of 2012 [2006], each student in a common school shall [complete an individual graduation plan which incorporates emphasis on career development and shall] have a total of at least twenty-two [22] credits for high school graduation. Those credits shall include the content standards as provided in the program of studies, 704 KAR 3:303. Additional standards-based learning experiences shall align to the student’s individual learning plan and shall consist of standards-based content. The required credits and demonstrated competencies shall include the following minimum requirements:

1. ([39]) Language arts: four (4) credits [including English I, II, III, and IV] to include the content strands of reading, writing, speaking, listening, observing, inquiring, conventions, analysis, and using technology as a communication tool. Language arts shall be taken each year of high school;

2. ([3b]) Social studies - three (3) credits to include the content strands of Historical perspective, including United States History, geography, economics, government, and civics, and cultures and societies [to incorporate U.S. History, Economics, Government, World Geography, and World Civilization];

3. ([3g]) Mathematics - three (3) credits to include the content strands of number property and operation, measurement, geometry, data analysis and probability, and algebraic thinking, and including the following minimum requirements:

   a. [3-I] One (1) mathematics course taken each year of high school to ensure readiness for postsecondary education or the workforce based on the student’s individual learning plan;
   b. [3-II] Required courses shall include: Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical [or technical/occupational] course that prepares a student for a career path based on the student’s individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the program of studies, 704 KAR 3:303; and
   c. [3-III] Prealgebra shall not be counted as one (1) of the three (3) required mathematics credits for high school graduation but may be counted as an elective (including Algebra I, Geometry, and one (1) elective as provided in the program of studies, 704 KAR 3:303);

4. ([3d]) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content strands of biological (including life science, physical science, and earth and space science, and unifying concepts [as provided in the program of studies, 704 KAR 3:303]);

5. ([3e]) Health - one-half (1/2) credit to include the content strands of individual wellness, consumer decision, personal wellness, mental wellness, and community services;

6. ([3f]) Physical education - one-half (1/2) credit to include the content strands of personal wellness, psychomotor, and lifetime activity;

7. ([3g]) History and appreciation of visual and performing arts (or another arts course which incorporates this content) - one (1) credit to include the content strands of arts, dance, music, theatre, and visual arts, or a social studies course (or another arts course) based on the student’s individual learning plan; and

8. ([4a]) Academic and career Interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career Interest based on the student’s individual learning plan;

9. ([c]) Demonstrated performance-based competency in technology (Electives—seven (7) credits).

Section 3. (1) ([3]) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical [technical/occupational] course, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. The course description shall be filed with the Department of Education.

([2]) ([3]) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, or technical [technical/occupational] course, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards [if a substitution is made, a rationale and course description shall be filed with the Department of Education].

Section 4. (3) ([11]) A district shall implement an advisory and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address Vocational Studies Academic Expectations 2.36-2.38 as established in Academic expectations, 703 KAR 4:060.

([2]) ([3]) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

([3]) A feeder middle school and a high school shall work coop-
retrieved to ensure that each student and parent shall receive information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

4. A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parent, and school officials.

5. Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

6. Beginning with the graduating class of 2013, the development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.

Section 5. 14-1 (1) A board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the program of studies, 704 KAR 3:303, and a rigorous performance standards policy established by the board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

7. A board of education shall issue an award toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one subject or

(b) A standards-based performance-based credit, regardless of the number of instructional hours in one (1) subject.

8. A local board of education which has chosen to award standards-based performance-based credit shall award 1-1.5 grade.

9. (a) The content of the course is the same that is established in the Program of studies, 704 KAR 3:303; and

(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

10. A board of education which has chosen to award standards-based performance-based credit (2)(c) A district shall establish a policy for a performance-based credit system that includes:

(a) The procedures for developing performance-based credit systems and for amending the system;

(b) The criteria under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards as addressed in 704 KAR 3:303, Program of studies, and 703 KAR 4 060, Academic expectations; and

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are included.

1. Designed to further student progress toward the individual Learning plan:

2. (1) Supervised by qualified instructors; and

3. (2)(c) Aligned with state and local content and performance standards.

Section 6. 14-1 (1) A student who successfully completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education shall be awarded a graduation diploma.

2. The local board of education shall award the diploma.

Section 7. 14-1 (4) This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal or teacher from awarding special recognition to a student.

Section 8. 14-1 (1) Until the graduating class of 2012, if the severity of an exceptional student's disability precludes a course of study leading to receipt of a diploma, an alternative program shall be offered. This program shall be based upon student needs, as specified in the individual educational plan, and shall be reviewed at least annually. A student who completes this course of study shall be recognized for achievement only when accomplished by the local board of education and a certificate shall be issued.

2. Beginning with the graduating class of 2012, if the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Section 2 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered. This course of study shall be based upon student needs and the provisions specified in 704 KAR 3 303. Program of studies, and shall be reviewed at least annually. A student who completes this course of study shall receive a certificate of attainment. This certificate shall indicate a student's readiness for work experience and will be awarded by the local board of education consistent with the graduation practices for all students. [5] [If the seventy of an exceptional student's graduation requirements that meet the high school graduation requirements established in Section 2 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered. This course of study shall be based upon student needs and the provisions specified in 704 KAR 3:303. Program of studies, and shall be reviewed at least annually. A student who completes this course of study shall receive a certificate of work readiness and employability to be awarded by the local board of education, consistent with the graduation practices for all students. [Awarding a certificate]]

This is to certify that the chief state school officer has reviewed
VOLUME 33, NUMBER 3 - SEPTEMBER 1, 2006

and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: April 13, 2006
FILED WITH LRC: April 13, 2006 at 10 a.m.
CONTACT PERSON: Kevin M. Nolan, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

FINANCE AND ADMINISTRATION CABINET
School Facilities Construction Commission
(As Amended at ARRS, August 8, 2006)

750 KAR 1:010. Commission procedures.

STATUTORY AUTHORITY: KRS 157.617(1), 157.622(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.617(1) authorizes the School Facilities Construction Commission (SFCC) to promulgate administrative regulations for the orderly conduct of its affairs, including assisting local school districts to meet the school construction needs of the state. KRS 157.622(4) requires the SFCC to promulgate an administrative regulation governing allocations of state funds to eligible school districts. This administrative regulation establishes the procedures the SFCC utilizes in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project, and allocating savings from refinancings.

Section 1. Definitions. (1) "Available local revenue" is defined by KRS 157.615(1).
(2) "Daily interest" means the total interest divided by the number of days in the first coupon.
(3) "Eligible district" is defined by KRS 157.615(16).
(4) "Level repayment schedule" means a repayment schedule in which the combined annual amount of principal and interest payments for each issue of bonds remains relatively constant over the life of the issue.
(5) "Maximum annual repayment amount" means the maximum aggregate total of SFCC annual payments for all bonds issued for a particular school district in which the SFCC has participated. If a bond series has been refunded, the original issue and debt schedule shall be the one used in making this computation.
(6) "Offer of assistance" means the amount available for a school district from a current biennium along with any allocation available from a prior period which has not expired according to KRS 157.622(5) and (6).
(7) "SFCC" means the School Facilities Construction Commission.
(8) "Total interest" means the first gross interest payment of the debt service for the SFCC portion of the schedule.

Section 2. Eligibility. (1) The SFCC shall use the statement of need and available local revenue as certified by the Kentucky Board of Education in determining the rate of participation of each school district in any given biennium. Eligibility for participation as established in KRS 157.620(1) shall be certified by the Kentucky Board of Education.
(2) A school district retaining capital outlay funds in its current expense general fund under the provisions of KRS 157.420 in the year preceding the biennium in which funds are available or during the biennium shall be ineligible to participate in the SFCC Program during that funding period.

Section 3. Rate of Participation. (1) The rate of participation of each eligible district shall be determined by dividing the unmet needs of that district by the total unmet needs of eligible districts and multiplying that fraction times the total new debt service budgeted for the biennium.
(2) If there are insufficient funds budgeted in the first year of the biennium to fund all the requests, bond sales shall be scheduled in the order in which the SFCC receives requests for approval of bond sales.
(3) All bond sales may proceed after January 1 of the first year of the biennium.

Section 4. Offer of Assistance. Upon certification of the rate of participation by the SFCC, the Executive Director of the SFCC shall notify each eligible district of its entitled rate of participation and the requirements to be met if it wishes to accept the offer of assistance. These requirements shall include:
(1) The amount of local revenue to be expended as certified by the Kentucky Board of Education;
(2) The priority order of facilities to be built as certified by the Kentucky Board of Education; and
(3) The sequence of events and deadlines to be met if the local school district accepts the offer of assistance.

Section 5. Acceptance of Offer of Assistance. (1) Within thirty (30) days of receipt of the offer of assistance, the local board of education shall notify the SFCC of acceptance or rejection of the offer of assistance. The local district response shall indicate the amount of the offer it plans to commit to construction or renovation immediately and the amount it wishes to count as cumulative credit.
(2) A district not responding within thirty (30) days shall be declared ineligible and the offer of assistance shall be withdrawn and redistributed to the eligible recipients. In extenuating circumstances and upon written request within the original thirty (30) day period, a single thirty (30) day extension shall be granted by the Executive Director of the SFCC.

Section 6. Review of Building Plans. The review and approval of building plans shall be the responsibility of the Kentucky Department of Education.

Section 7. Allowable Expenditures of Funds. (1) Funds available from available local revenue shall be expended before funds generated by bond sales authorized by the SFCC.
(2) Funds available for a project shall be expended for the purpose of major renovation or construction of the identified project except that the balance of funds remaining after the completion of the project may be expended on the next project on the approved facilities plan of the respective districts.
(3) Project costs may include site acquisition, providing architectural and engineering services, financial and legal services, and equipment.
(a) The site acquisition cost shall be limited to the lesser of:
1. The actual cost of acquiring a site; or
2. The fair market value of the site as determined by a qualified appraisal obtained by the SFCC and charged to the project account.
(b) Construction costs shall not include the cost of supplies. An item shall be considered a supply if the item:
1. Does not retain its original shape, appearance, and character with use;
2. Loses its identity through fabrication or incorporation into a different or more complex unit;
3. Is expendable. An item shall be expendable if it is more feasible to replace, rather than repair, an item that has been damaged or lost or worn parts;
4. Is expected to serve its principal purpose for less than ten (10) years, even with reasonable care and maintenance;
5. Is not an integral part of the building. An item shall be an integral part of the building if it:
   a. Is permanently fastened or attached to the building;
   b. Functions as part of the building, meaning that the item is essential for the building or site to be used for its intended purpose;

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or
c. Will cause appreciable damage to the building if removed; or
6. Does not enhance the value of a bondholder's collateral or the project.

(4) SFCC funds or funds from the restricted account shall not be used to:
(a) Purchase a site not approved by the Kentucky Department of Education in accordance with 702 KAR 4:080; or
(b) Reimburse the local board of education for a site acquired before enactment of KRS 157.611.

Section 8. Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the SFCC shall determine if the local school district or the SFCC shall issue the bonds. Local school districts may request authority from the SFCC to issue the bonds through a city, county, or other agency and instrumentality of the Board of Education.

(2) If the SFCC grants permission to issue bonds at the local level, the procedures for issuing the bonds shall be as follows:
(a) The local board of education shall obtain the services of a financial advisor;
(b) The contract with the financial advisor shall be submitted to the SFCC for final approval after signature by the local school district and the financial advisor;
(c) The local board of education shall obtain the services of a licensed trustee, paying agent, and registrar.

(3) If the size of the bond issues is less than $1,000,000 or there is no local participation in the repayment, the SFCC may determine that it is in the best interests of the SFCC and the local school board to manage the bond sale procedures. If the SFCC determines that it is in the best interest of the SFCC and the local school board for the SFCC to manage the bond sale procedures:
(a) The bonds shall be sold in the name of the SFCC;
(b) The SFCC shall obtain the services of a financial advisor;
(c) The SFCC may combine multiple projects into single bond issuance, and;
(d) The SFCC shall obtain the services of a licensed trustee, paying agent, and registrar.

(4) The following procedures shall be followed by all participating districts in construction of SFCC debt service schedules:
(a) The SFCC's portion of the bond sale shall be limited to a twenty (20) year issue, with a level repayment schedule. The maximum amount of the annual amount shall not exceed the offer of assistance from the SFCC.

1. The debt service schedule shall have twenty (20) years of payments based on six (6) month intervals or forty (40) payments. If the payments begin so that only one (1) payment is made in the first fiscal year of the schedule, payments may extend over twenty-one (21) fiscal years, if the amounts of the first and last payments contributed do not exceed the amount of the payment.

2. Annual payments shall be based on a fiscal year. The fiscal year of the SFCC shall begin on July 1 and end the following June 30.

All schedules shall be prepared in a way that annual amounts based on a fiscal year are presented in a clear, easy-to-read format while each interest and principal payment is both segregated and totaled by payment period.

(b) The local school district's portion of the bond sale shall be structured to meet the unique financial needs of the district. Debt service on the bonds issued shall include the minimum amount required for eligibility to participate in the program as certified by the Kentucky Board of Education. The minimum term of the local bond issue to meet eligibility criteria shall be twenty (20) years. At the discretion of the local board of education, the bond issue may include a local contribution to debt service in excess of the minimum required, and the length of the local portion of the repayment schedule may exceed twenty (20) years.

(c) Interest collected and accrued on funds derived from the bond sale shall be allocated to the debt service schedules of the school district and the SFCC in the same proportions as its respective participation in the bond issue.

1. For allocation purposes, each month shall be calculated as thirty (30) days.

2. The accrued interest allocated to the SFCC shall be calculated by multiplying the number of days times the daily interest.

3. The number of days shall be calculated from the issue date of the bonds to the day the bonds are delivered, excluding the day of settlement.

4. If local payments are involved in the bond issue, the accrued interest available to the local district shall be calculated as required by subparagraph 2 of this paragraph.

(d) The proceeds of the bond sale shall be continually invested until expended on the project or until the project is completed. Any remaining proceeds or investment income received after completion of the project shall be applied to the debt service. Credit against the district's and the SFCC's debt service schedule shall be applied in the same percentage as the participation in the bond issue or, if permitted by the bond resolution or indenture, excess funds may be applied to an approved project next in order priority.

(e) A certificate of project completion shall be filed with the SFCC by the local school district. The certificate shall summarize the application of 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 paragraph. A fee that exceeds this schedule shall be paid by the local board of education.

1. The maximum fee for services and expenses of a financial advisor shall be the highest amount according to the following schedule:
   a. $7,500, for any amount of bonds issued;
   b. $1 per $1,000, if the bond amount is under $1 million;
   c. $10 per $1,000, if the bond amount is between $1 million and $2 million;
   d. $4 per $1,000, if the bond amount is over $2 million.

2. The fee shall:
   a. Be based upon the amount of bonds actually issued;
   b. Include attorney fees, printing of bonds and official statements, advertising the bond issue, travel of the financial agent, and other normal expenses related to the bond closing; and
   c. Not include a title search or rating service.

Section 9. Cumulative Credit. Any eligible district which fails in any budget period to receive an allocation of state funds sufficient to fund the first priority project on the approved facilities plan of the district may request the approval of the SFCC to accumulate credit surpluses in the availability of funds, for purposes of a bond issue for a period not to exceed eight (8) [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 there are insufficient funds to complete the next project, those funds may accumulate as previously outlined. All fund credit accumulated in this manner shall be forfeited at any time that the local district fails to accept an offer of assistance tendered to the district.

Section 10. Refinancing Savings. Savings that occur as the result of a refinancing in which the SFCC was a participant shall be divided as follows and in the following order or priority:

(1) If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service can be maintained on behalf of the SFCC, it shall be maintained at the same annual amount; therefore, lowering the local district's account for annual debt service payments by the amount of the total savings on the refinancing. Consequently, the bonding capacity of the local district shall be increased allowing the district to pursue its next facility priority. Any accrued interest shall be deemed a part of the total savings.

(2) If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service paid on behalf of the SFCC is greater than the annual debt service of the refinanced bond issue debt, annual savings generated shall be added to that school district's cumulative credit with the SFCC. These credits shall have no expiration time period for their use.

DR. ROBERT TARVIN, Executive Director
VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

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FILED WITH LRC: June 12, 2006 at 10 a.m.
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Workers’ Claims
(As Amended at ARR, August 8, 2006)

803 KAR 25.010. Procedure for adjustments of claims.

RELATES TO: KRS 342.001(1), 342.125, 342.260, 342.265,
342.270, 342.300, 342.310, 342.315, 342.710, 342.715, 342.732,
342.760
STATUTORY AUTHORITY: KRS 342.033, 342.200(1),
342.270(3), 342.285(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.285(1) requires the executive director to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the executive director to promulgate an administrative regulation establishing procedures for the resolution of claims. KRS 342.033 requires the executive director to prescribe the format and content of written medical reports. KRS 342.285(1) requires the executive director to promulgate an administrative regulation governing appeals to the Workers’ Compensation Board. This administrative regulation establishes the procedures for the resolution of claims before an administrative law judge or Workers’ Compensation Board.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).
(2) "Board" is defined by KRS 342.001(16).
(3) "Civil rule" means the Kentucky Rules of Civil Procedure.
(4) "Date of filing" means the date that:
(a) A pleading, motion, or other document is received by the Executive Director at the Office of Workers’ Claims in Frankfort, Kentucky, except:
1. Final orders and opinions of administrative law judges, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion.
2. Documents delivered to the offices of the Office of Workers’ Claims after the office is closed at 4:30 p.m. or on the weekend, which shall be deemed filed the following business day; or
(b) A document is transmitted by United States registered (not certified) or express mail, or by other recognized mail carriers, and the date the transmitting agency receives the document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.
(5) "Employee" means individuals, partnerships, voluntary associations, and corporations.
(6) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.540 but has not complied with KRS 342.240.
(7) "Executive director" is defined by KRS 342.001(9) [342.0014(19)].
(8) "Latest available edition" means that edition of the "Guides to the Evaluation of Permanent Impairment" which the executive director has certified as being generally available to the office, attorneys, and medical practitioners, by posting prominently at the office’s hearing sites the date upon which a particular edition of the "Guides to the Evaluation of Permanent Impairment" is applicable for purposes of KRS Chapter 342.
(9) "Special defenses" means defenses that shall be raised by "special answer" filed in accordance with Section 5(2)(d) of this administrative regulation.

Section 2. Parties. (1) The party making the original application for resolution of claim pursuant to KRS 342.270 or 342.316 shall be designated as "plaintiff". Adverse parties shall be designated as "defendants".

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If a person refuses to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An administrative law judge shall order, upon a proper showing, that a party be joined or dismissed.
(b) The Special Fund may be joined as a defendant in accordance with the appropriate statutory provisions for claims in which the injury date or date of last exposure occurred before December 12, 1995.
(c) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

Section 3. Pleadings. (1) An application for resolution of claim and all other pleadings shall be typewritten and submitted in accordance with this administrative regulation.
(a) For an injury occurring on or after December 12, 1995, an applicant shall submit a completed Form 101, Application for Resolution of Injury Claim.
(b) For an occupational disease claim other than coal workers’ pneumoconiosis, an applicant shall submit a completed Form 102-0D [197], Application for Resolution of Occupational Disease Claim.
(c) For a hearing loss claim, an applicant shall submit a completed Form 103, Application for Resolution of Hearing Loss Claim.
(2) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The executive director shall make service by first class mail. Incomplete applications may be rejected and returned to the applicant. If the application is refiled in proper form within twenty (20) days of the date it was returned, the filing shall relate back to the date the application was first received by the executive director. Otherwise, the date of second receipt shall be the filing date.
(3) All pleadings shall be served upon the executive director and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to that representative, at the party’s or representative’s last known address. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. Notices of deposition and physical examination shall be served upon the parties and shall not be filed with the executive director.
(4) After the application for resolution has been assigned to an administrative law judge, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before Administrative Law Judge (name)". Upon consolidation of claims, the most recent claim number shall be listed first.
(5)(a) All documents involved in an appeal to the Workers’ Compensation Board shall include the language "Before Workers’ Compensation Board" before the claim number within the style of the claim.
(b) Parties shall insert the language "Appeals Branch" or "Workers’ Compensation Board" on the outside of the envelope containing documents involved in an appeal.

Section 4. Motions. (1) The party filing a motion shall tender a proposed order granting the relief requested.
(2) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.
(3) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating the facts.
(4) Every motion, the grounds of which depend upon the existence of facts which the moving party believes are shown in the evidence, or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.
(5) A motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, shall be considered ten (10) days after the
date of filing. A response shall be considered if filed on or before the tenth day after the filing of the motion.

(6)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

1. A current medical release Form 106 executed by the plaintiff;
2. An affidavit evidencing the grounds to support reopening;
3. A current medical report showing a change in disability established by objective medical findings;
4. A copy of the opinion and award, settlement, voluntary agreed order or agreed resolution sought to be reopened;
5. An affidavit certifying that a previous motion to reopen has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed;
6. A designation of evidence from the original record specifically identifying the relevant items of proof which are to be considered as part of the record during reopening; or
7. A certification of service that the motion was served on all parties as well as counsel for the parties.

(b1) A designation of evidence made by a party shall list only those items of evidence from the original record that are relevant to the matters raised on reopening.

(c) The burden of completeness of the record shall rest with the parties to include so much of the original record, up to and including the award or order on reopening, as is necessary to permit the administrative law judge to compare the relevant evidence that existed in the original record with all subsequent evidence submitted by the parties.

(d) If any good cause shown at the time of the filing of the designation of evidence, a party shall not designate the entire original record from the claim for which reopening is being sought.

(c1) A motion to reopen shall not be considered until twenty-five (25) days after the date of filing.

2. Any response shall be filed within twenty (20) days of filing the motion to reopen.

(d) A response may contain a designation of evidence specifically identifying evidence from the original record not already listed by the moving party that is relevant to matters raised in a response.

(d) Any party may use the following forms provided by the office for motions to reopen:

1. Form MTR-1, Motion to Reopen by Employees;
2. Form MTR-3, Motion to Reopen by Defendant; and
3. Form MTR-2, Motion to Reopen KRS 342.732 Benefits.

(7) A motion for allowance of a plaintiff's attorney fee shall:

(a) Be made within thirty (30) days following the finality of the award, settlement or agreed resolution upon which the fee request is based;
(b) Be served upon the adverse parties and the attorney's client;
(c) Set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320; and
(d) Be accompanied by:
   1. An affidavit of counsel detailing the extent of the services rendered and the time expended;
   2. A signed and dated Form 109 as required by KRS 342.320(5); and
   3. A copy of the signed and dated contingency fee contract.

(8) A motion for allowance of defendant's attorney's fee shall:

(a) Be filed within thirty (30) days following the finality of the decision; and
(b) Accompanied by an affidavit of counsel detailing:
   1. The extent of the services rendered and the time expended;
   2. The hourly rate and total amount to be charged; and
   3. The date upon which agreement was reached for providing the legal services.

(9) The following motions relating to vocational rehabilitation training provided by the office may be used by all parties:

(a) Form VRT, Petition for Vocational Rehabilitation Training; and
(b) Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation

(10) If a plaintiff is deceased, a Motion to Substitute Party and Continue Benefits shall be filed on Form 11.

Section 5. Application for Resolution of an Injury Claim and Response. (1) To apply for resolution of an injury claim, the applicant shall file Form 101 with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury;
(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;
(c) Medical release (Form 106);
(d) One (1) medical report which may consist of legible, handwritten notes of the treating physician, and which shall include the following:

1. A description of the injury which is the basis of the claim;
2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim; and
3. If a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder;

(e) Documentation substantiating the plaintiff's preinjury and postinjury wages; and

(f) Documentation establishing additional periods for which temporary total disability benefits are sought.

(2)(a) The defendant shall file a Notice of Claim Denial or Acceptance on a Form 111 - Injury and Hearing Loss within forty-five (45) days after the notice of the scheduling order or within forty-five (45) days following an order sustaining a motion to reopen a claim.

(b) If a Form 111 is not filed, all allegations of the application shall be deemed admitted.

(c) The Form 111 shall set forth the following:

1. All pertinent matters which are admitted and those which are denied;
2. If a claim is denied in whole or in part, a detailed summary of the basis for denial;
3. The name of each witness whose testimony may be relevant to that denial; and
4. A description of the physical requirements of the plaintiff's job at the time of the alleged injury and the name, address and telephone number of the individual responsible for gathering this information for the employer and its insurer.

(d) In addition to the Form 111, a defendant shall file a special answer to raise any special defenses in accordance with this paragraph.

1. A defendant may incorporate special defenses that have been timely raised in the Form 111.

2. A special answer shall be filed within:
   a. Forty-five (45) days of the scheduling order, or
   b. Ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence.
3. A special defense shall be waived if not timely raised.

4. A special defense shall be pleaded if the defense arises under:
   a. KRS 342.035(3), unreasonable failure to follow medical advice;
   b. KRS 342.165, failure to comply with safety laws;
   c. KRS 342.316(7) or 342.335, false statement on employment application;
   d. KRS 342.395, voluntary rejection of KRS Chapter 342;
   e. KRS 342.610(3), voluntary intoxication or self-infliction of injury;
   f. KRS 342.710(5), refusal to accept rehabilitation services; or
   g. Running of periods of limitations or to which KRS 342.185, 342.270, 342.316, or other applicable statute.

Section 6. Application for Resolution of an Occupational Disease Claim and Response. (1) To apply for resolution of an occupational disease claim, the applicant shall file Form 102-OD.
with the following completed attachments:
(a) Work history (Form 104), to include all past jobs performed on
a full or part-time basis within twenty (20) years preceding the
date of last exposure and all jobs in which plaintiff alleges expo-
sure to the hazards of the occupational disease;
(b) Medical history (Form 105), to include all physicians, chiro-
practors, osteopaths, psychiatrists, psychologists, and medical
facilities such as hospitals where the individual has been seen or
admitted in the preceding fifteen (15) years and including beyond
that date any physicians or hospitals regarding treatment for the
same body part claimed to have been injured;
(c) Medical release (Form 106);
(d) One (1) medical report supporting the existence of occupa-
tional disease, and
(e) Social Security [earnings-records] Release Form (Form
115).
(2)(a) The defendant shall file a Notice of Claim Denial or Ac-
ceptance on a Form 111-OD:
1. Within forty-five (45) days after the notice of the scheduling
order; and
2. In accordance with Section 5(2)(b), (c), and (d) of this ad-
ministrative regulation.
(b) In addition to the Form 111-OD, a defendant shall file a
special answer to raise any special defenses in accordance with
Section 5(2)(d) of this administrative regulation.
(c) For all occupational disease and hearing loss claims, the
executive director shall promptly schedule an examination pursu-
ant to KRS 342.315 and 342.316.

Section 7. Application for Resolution of a Hearing Loss Claim and
Response. (1) To apply for resolution of a hearing loss claim,
the applicant shall file Form 103 with the following completed
documents:
(a) Work history (Form 104), to include all past jobs performed
on a full or part-time basis within twenty (20) years preceding the
last date of noise exposure;
(b) Medical history (Form 105), to include all physicians, chiro-
practors, osteopaths, psychiatrists, psychologists, and medical
facilities such as hospitals where the individual has been seen or
admitted in the preceding fifteen (15) years and including beyond
that date any physicians or hospitals regarding treatment for hear-
ing loss or ear complaints;
(c) Medical release (Form 106);
(d) One (1) medical report describing the hearing loss which is
the basis of the claim and, if a psychological condition is alleged,
an additional medical report establishing the presence of a mental
impairment or disorder. Medical reports required under this
paragraph may consist of legible, hand-written notes of a treating phy-
sician; and
(e) Social Security [earnings-records] Release Form (Form
115).
(2)(a) The defendant shall file a Notice of Claim Denial or Ac-
ceptance on Form 111 - Injury and Hearing Loss:
1. Within forty-five (45) days after the notice of the scheduling
order; and
2. In accordance with Section 5(2)(b), (c), and (d) of this ad-
ministrative regulation.
(b) In addition to the Form 111 - Injury and Hearing Loss, a
defendant shall file a special answer to raise any special defenses in
accordance with Section 5(2)(d) of this administrative regulation.

Section 8. Discovery, Evidence, and Exchange of Records. (1)
Proof taking and discovery for all parties shall begin from the date
of issuance by the executive director [commissioner] of the
scheduling order.
(2)(a) Plaintiff and defendants shall take proof for a period of
sixty (60) days from the date of the scheduling order;
(b) After the sixty (60) day period, defendants shall take proof
for an additional thirty (30) days; and
(c) After the defendant's thirty (30) day period, the plaintiff
shall take rebuttal proof for an additional fifteen (15) days.
(3) During the pendency of a claim, any party obtaining or pos-
sessing a medical or vocational report or records shall serve a
copy of the report or records upon all other parties within ten (10)
days following receipt of those reports or records or within ten (10)
days of receipt of notice if assigned to an administrative law judge.
(4) All medical reports filed with Forms 101, 102-OD [462], or
103 shall be admitted into evidence without further order if:
(a) An objection is not filed prior to or with the filing of the Form
111; and
(b) The medical reports comply with Section 10 of this admin-
istrative regulation.

Section 9. Vocational Reports. (1) A vocational report may be
filed by notice and shall be admitted into evidence without further
order and without the necessity of a deposition, if an objection is
not filed.
(2) Vocational reports shall be signed by the individual making
the report.
(3) Vocational reports shall include, within the body of the re-
port or as an attachment, a statement of the qualifications of the
person making the report.
(4) An objection to the filing of a vocational report shall:
(a) Be filed within ten (10) days of the filing of the notice or
motion for admission; and
(b) State the grounds for the objection with particularity.
(5) The administrative law judge shall rule on the objection
within fifteen (15) days.
(6) If a vocational report is admitted as direct testimony, an
adverse party may depose the reporting vocational witness in a
timely manner as if on cross-examination at its own expense.

Section 10. Medical Reports. (1) A party shall not introduce
direct testimony from more than two (2) physicians by medical
report except upon a showing of good cause and prior approval by
an administrative law judge.
(2) Medical reports shall be submitted on Form 107-I (injury),
Form 107-P (psychological), Form 108-OD (occupational disease),
Form 108-CWP (coal workers' pneumoconiosis), or Form 108-HL
(hearing loss), as appropriate, except that an administrative law
judge may permit the introduction of other reports.
(3) Medical reports shall be signed by the physician making the
report, or be accompanied by an affidavit from the physician or
submitting party or representative verifying the authenticity of
the report.
(4) Medical reports shall include, within the body of the report
or as an attachment, a statement of qualifications of the person
making the report. If the qualifications of the physician who pre-
pared the written medical report have been filed with the executive
director and the physician has been assigned a medical qualifica-
tions index number, reference may be made to the physicians
index number in lieu of attaching qualifications.
(5) Narratives in medical reports shall be typewritten. Other
portions, including epiographic notations, shall be clearly legible.
(6)(a) Upon notice, a party may file the testimony of two (2)
physicians, either by deposition or medical report, which shall be
admitted into evidence without further order if an objection is not
filed.
(b) Objection to the filing of a medical report shall be filed
within ten (10) days of the filing of the notice or the motion for ad-
mission.
(c) Grounds for the objection shall be stated with particularity.
(d) The administrative law judge shall rule on the objection
within fifteen (15) days of filing.
(7) If a medical report is admitted as direct testimony, an
adverse party may depose the reporting physician in a timely manner
as if on cross-examination at its own expense.

Section 11. Medical Evaluations Pursuant to KRS 342.315. (1)
All persons claiming benefits for hearing loss or occupational dis-
ease other than coal workers' pneumoconiosis shall be referred by
the commissioner for a medical evaluation in accordance with con-
tracts entered into between the executive director and the Univer-
sity of Kentucky and University of Louisville medical schools.
(2) Upon all other claims except coal workers' pneumoconiosis
claims, the executive director [commissioner] or an administrative
law judge may direct appointment by the executive director of a
university medical evaluator.
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(3) Upon referral for medical evaluation under this section, a party may tender additional relevant medical information to the university medical school to whom the evaluation is assigned. This additional information shall not be filed of record. The additional medical information shall be:

(a) Submitted to the university within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315;
(b) Submitted by way of medical reports, notes, or depositions;
(c) Clearly legible;
(d) Indexed;
(e) Furnished in chronological order;
(f) Timely furnished to all other parties within ten (10) days following receipt of the medical information; and
(g) Accompanied by a summary that is filed of record and served upon all parties. The summary shall:

1. Identify the medical provider;
2. Include the date of medical services; and
3. Include the nature of medical services provided.

(4) Upon the scheduling of an evaluation, the executive director shall provide notice to all parties and the employer shall forward to the plaintiff necessary travel expenses as required by KRS 342.315(4). Upon completion of the evaluation, the executive director shall provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.

(5) The administrative law judge shall allow timely cross-examination of a medical evaluator appointed by the executive director at the expense of the moving party.

(6) Unjustified failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, payment of a no-show fee, sanctions, or all of the above.

(7) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) days of notification of a scheduled medical evaluation may be grounds for imposition of sanctions.

Section 12. Interlocutory Relief. (1) During a claim, a party may seek interlocutory relief through:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);
(b) Medical benefits pursuant to KRS 342.020; or
(c) Rehabilitation services pursuant to KRS 342.710.

(2) Upon motion of any party, an informal conference:

(a) Shall be held to review the plaintiff's entitlement to interlocutory relief; and
(b) May be held telephonically.

(3) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the request and thereafter, the request shall be ripe for a decision.

(4)(a) Entitlement to interlocutory relief shall be shown by medical affidavit, deposition, or other evidence of record demonstrating the requesting party:

1. Is eligible under KRS Chapter 342; and
2. Will suffer irreparable injury, loss or damage pending a final decision on the application.

(b) Rehabilitation services may be ordered while the claim is pending upon showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(5) If Interlocutory relief is awarded in the form of income benefits, the application shall be placed in abeyance unless a party shows irreparable harm will result. The administrative law judge may require periodic reports as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the administrative law judge's own motion, interlocutory relief shall be terminated and the claim removed from abeyance.

(6) An attorney's fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

(7) A party seeking interlocutory relief may use the following forms:

(a) Motion for Interlocutory Relief, Form MIR-1;
(b) Affidavit for Payment of Medical Expenses, Form MIR-2;
(c) Affidavit for Payment of Temporary Total Disability, Form MIR-3; and
(d) Affidavit Regarding Rehabilitation Services, Form MIR-4.

Section 13. Benefit Review Conference. (1) The purpose of the benefit review conference shall be to expedite the processing of the claim and to avoid if possible the need for a hearing.

(2) The benefit review conference shall be an informal proceeding.

(3) The date, time, and place for the benefit review conference shall be stated on the scheduling order issued by the executive director.

(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the benefit review conference.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier with settlement authority shall be present or available by telephone during the benefit review conference.

(6) The administrative law judge may upon motion waive the plaintiff's attendance at the benefit review conference for good cause shown.

(7) A transcript of the benefit review conference shall not be made.

(8) Representatives of all parties shall have authority to resolve disputed issues and settle the claim at the benefit review conference.

(9)(a) The defendant shall provide a completed Form AWW-1, Average Weekly Wage Certification.

(b) The plaintiff shall bring copies of unpaid medical bills and documentation of out-of-pocket expenses including travel for medical treatments.

(c) Each defendant shall bring copies of disputed medical bills and medical expenses.

(10) Ten (10) days before the benefit review conference, the parties shall exchange final stipulations and lists of known witnesses and exhibits that:

(a) Name each proposed witness;
(b) Summarize the anticipated testimony of each witness;
(c) For medical witnesses, include in the summary:

1. The diagnosis reached;
2. Clinical findings and results of diagnostic studies upon which the diagnosis is based;
3. The functional impairment rating assessed by the witness; and
4. A description of any work-related restrictions imposed; and
(d) Identify any exhibits.

(11) At the benefit review conference, the parties shall:

(a) Attempt to resolve controversies and disputed issues;
(b) Narrow and define disputed issues; and
(c) Facilitate a prompt settlement.

(12) A party seeking postponement of a benefit review conference shall file a motion at least fifteen (15) days prior to the date of the conference and shall demonstrate good cause for the postponement.

(13) If at the conclusion of the benefit review conference the parties have not reached agreement on all the issues, the administrative law judge shall:

(a) Prepare a summary stipulation of all contested and uncontested issues which shall be signed by representatives of the parties and by the administrative law judge; and
(b) Schedule a final hearing.

(14) Only contested issues shall be the subject of further proceedings.

(15) Upon motion with good cause shown, the administrative law judge may order that additional discovery or proof be taken between the benefit review conference and the date of the hearing and may limit the number of witnesses to be presented at the hearing.

Section 14. Evidence - Rules Applicable. (1) The Rules of Evidence prescribed by the Kentuck Supreme Court shall apply in all proceedings before an administrative law judge except as varied by specific statute and this administrative regulation.

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Section 18. Hearings. (1) At the hearing, the parties shall present proof concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the claim shall be taken under submission immediately or briefs may be ordered.

(3) Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages. Permission to increase the length of a brief shall be sought by motion.

(4) The administrative law judge may announce his decision at the conclusion of the hearing or shall defer decision until rendering a written opinion.

(5) A decision shall be rendered no later than sixty (60) days following the hearing.

(6) The time of filing a petition for reconsideration or notice of appeal shall not begin to run until after the "date of filing" of the written opinion.

(7) An opinion or other final order of an administrative law judge shall not be deemed final until the administrative law judge has certified that a certificate of mailing was sent to:

(a) An attorney who has entered an appearance for a party; or

(b) The party if an attorney has not entered an appearance.

(8) Parties with approval of the administrative law judge may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the administrative law judge. The claim shall be taken under submission as of the date of the order allowing the waiver of hearing. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.

Section 19. Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of a final order or award of an administrative law judge, clearly stating the patent error which the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies. The party filing the petition for reconsideration shall tender a proposed order granting the relief requested.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 20. Benefit Calculations for Settlement. (1) For computing lump sum settlements, the employer shall utilize the prescribed discount rate for its weeks of liability only, not for the entire award period. A discount shall not be taken on past due benefits by the employer or Special Fund. Lump sum settlements shall be calculated [using the Lump Sum Settlement Tables and the Six (6) Percent Present-Value Table] as follows:

(a) Determine the entire lump sum liability:

1. Compute the remaining weeks of liability in the award by subtracting the number of weeks past due from the entire number of weeks in the award.

2. Discount the number of weeks remaining in the award at the prescribed discount rate;

3. Multiply the weekly benefit rates by the discounted number of weeks remaining (subparagraph 2 of this paragraph) in the award. This product shall equal the entire future lump sum liability for the award; and

4. Add the amount of past due benefits to the future lump sum liability award (subparagraph 3 of this paragraph). The sum shall represent the entire lump sum value of the award.

(b) Determine the employer's lump sum liability as follows:

1. The employer's future liability shall be computed by determining its total weeks of liability less the number of weeks of liability past due.

2. The number of weeks remaining shall be discounted at the prescribed discount rate and multiplied by the amount of the weekly benefit.

3. Multiply the number of past due weeks by the amount of the weekly benefit.

4. The employer's entire liability for a lump sum payment shall be determined by adding the results of subparagraphs 2 and 3.
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(paragraph [b]-3) of this paragraph (subsection)
(c) Determine the Special Fund's portion of the lump sum liability by subtracting the value of the employer's liability in lump sum (paragraph (b) of this subsection) from the entire value of the lump sum settlement (paragraph (a) of this subsection). The remainder shall be the Special Fund's lump sum liability.

2. If the employer settles its liability for income benefits with the employee for a lump sum payment and a determination is made of the Special Fund's liability, the Special Fund's portion of income benefits shall be paid commencing with the date of approval of the employer's settlement and continuing for the balance of the compensable period.

3. In computing settlements involving periodic payments, the employer shall pay its liability over the initial portion of the award, based on the number of weeks its liability bears to the entire liability for the claim. The Special Fund shall make all remaining payments for the balance of the compensable period.

4. Pursuant to KRS 342.255, election by the Special Fund to settle on the same terms as the employer shall mean the Special Fund agrees to settle in the same manner as the employer in either a discounted lump sum or in periodic payments based upon its proportionate share of the permanent disability percentage paid by the employer. "Same terms" shall not include any additional payments the employer included for buy out of medical expenses, temporary total disability, rehabilitation, or other benefits for which the Special Fund is not liable.

5. Parties involved in a lump-sum settlement of future periodic payments shall use the discount factor computed in accordance with KRS 342.255(5).

6. Parties who reach an agreement pursuant to KRS 342.255 shall file the agreement on the applicable form as listed below:

(a) Form 110-F, Agreement as to Compensation and Order Approving Settlement - Fatality;
(b) Form 110-I, Agreement as to Compensation and Order Approving Settlement - Injury;
(c) Form 110-O, Agreement as to Compensation and Order Approving Settlement - Occupational Disease; or
(d) Form 110-CWP, Agreement as to Compensation and Order Approving Settlement - Coal Workers' Pneumoconiosis.


(a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of an envelope containing documents filed in an appeal to the board.

(2) Time and form of notice of appeal.

(a) Within thirty (30) days of the date a final award, order, or decision rendered by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by that award, order, or decision may file a notice of appeal to the Workers' Compensation Board.

(b) As used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).

(c) The notice of appeal shall:
1. Denote the appealing party as the petitioner;
2. Denote all parties against whom the appeal is taken as respondents;
3. Name the administrative law judge who rendered the award, order, or decision appealed from as a respondent;
4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the Division of Workers' Compensation Funds as a respondent; and
5. Include the claim number.

(d) Cross-appeal.

1. Any party may file a cross-appeal through notice of cross-appeal filed within ten (10) days after the notice of appeal is served.
2. A cross-appeal shall designate the parties as stated in the notice of appeal.

(e) Failure to file the notice within the time allowed shall require dismissal of the appeal.

(f) The executive director shall issue an acknowledgement to all parties of the filing of a notice of appeal or cross-appeal.

(g) Number of copies and format of petitioner's brief.

(a) The petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal.

(b) An original and two (2) copies of the petitioner's brief shall be filed with the Executive Director of the Office of Workers' Claims.

(c) The petitioner's brief shall conform in all respects to Civil Rule 7.02(4).

(h) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner (or petitioners) and respondent (or respondents) and shall be drafted in the following manner:

1. The name of each petitioner and each respondent shall be included in the brief.
2. The petitioner shall specifically designate as respondents all adverse parties.
3. The administrative law judge who rendered the award, order, or decision appealed from shall be named as a respondent.
4. The workers' compensation claim number, or numbers, shall be set forth in all pleadings before the Workers' Compensation Board.
5. The petitioner's brief shall state the date of entry of the award, order, or decision by the administrative law judge.
6. The petitioner's brief shall state whether any matters remain in litigation between the parties in any forum or court other than those for which an appeal is being sought.
7. The petitioner's brief shall include a "Notice of Oral Argument" designating whether the party requests an argument to be heard orally before the board and, if so, a brief statement setting out the reason or reasons for the request.
8. The petitioner's brief shall include a "Statement of Benefits Pending Review" which shall set forth whether the benefits designated to be paid by the award, order, or decision for which review is being sought have been instituted pursuant to KRS 342.300.
9. The organization and contents of the petitioner's brief for review shall be as follows:

1. A brief "Introduction" shall indicate the nature of the case.
2. A "Statement of Facts and Authorities" shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner's contentions with respect to each issue of law on which he relies for a reversal, listing under each the authority cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited. This requirement may be eliminated for briefs of five (5) or less pages.
3. A "Statement of the Case" shall consist of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the specific passages of the record supporting each of the statements narrated in the summary.
4. An "Argument" shall:
   a. Conform with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law; and
   b. Contain, at the beginning of the argument, a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.
5. A "Conclusion" shall set forth the specific relief sought from the board.
6. An "Appendix" shall contain:
   a. Copies of the final award, order, or decision of the administrative law judge from which review is sought;
   b. Any petitions for reconsideration filed by the parties pursuant to KRS 342.281;
   c. The administrative law judge's order addressing any petitions for reconsideration;
   d. Copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and
   e. Copies of prior board opinions (or non-factual or unpublished opinions of the Court of Appeals or Supreme Court) in accordance with subsection (9) of this section.

7. [Civil Rule 76.28(4)(c)] shall govern the use of unpub-
lished opinions of the Court of Appeals or Supreme Court.

(5) Respondent's brief, combined brief, or cross-petitioner's brief.
(a) Each respondent shall file an original and two (2) copies of a brief, combined brief if cross-petition or cross-petitioner's brief, within thirty (30) days of the date on which the petitioner's brief was filed with the Executive Director of the Office of Workers' Claims.
(b) The respondent's brief shall include a "Need for Oral Argument" similar to the statement required of the petitioner by subsection (4)(e) of this section.
(c) The respondent's brief shall include a "Statement of Benefits Pending Review" similar to the statement required of the petitioner by subsection (4)(f) of this section.
(d) Respondent's counter-argument shall follow the organization and content of the petitioner's brief as set forth in subsection (4)(g) of this section.

(6) Reply brief.
(a) If applicable, the petitioner may file a reply brief within ten (10) days after the date on which the respondent's brief was served or due, whichever is earlier.
(b) The organization and contents of the reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an index, or contents page shall not be required.
(c) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within ten (10) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier.

(7) Certification. The petitioner's brief, respondent's brief, and reply brief shall be signed by each party or his counsel and that signature shall constitute a certification that the statements contained in the document are true and made in good faith.

(8) Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief, and reply briefs on adverse parties.
(a) Before filing a notice of appeal, cross-appeal, or any brief with the Executive Director of the Office of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 502, a copy of the document on each adverse party.
(b) Every brief filed in an appeal to the Workers' Compensation Board shall bear, on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the attorney or party that serve has been made as required by paragraph (a) of this subsection. The statement shall identify by name each person served.
(c) The name of each attorney submitting a document to the Workers' Compensation Board on behalf of an adverse party shall be signed on every sheet of paper.
(d) If the respondent is also a cross-petitioner, the respondent may file a combined brief or separate cross-petitioner's brief which shall address issues raised by the cross-appeal.
(e) If a separate cross-petitioner's brief is filed, the format shall be the same as a respondent's brief.

(9) Form of citations.
(a) All citations of Kentucky statutes and reported decisions of the Court of Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).
(b) All citations of Kentucky unreported decisions shall conform to the requirements of Civil Rule 76.28(4)(c).

(10) Number of pages.
(a) The petitioner's brief and the respondent's brief shall be limited to twenty (20) pages each.
(b) Reply briefs shall be limited to five (5) pages.
(c) Combined briefs shall be limited to twenty-five (25) pages.

(d) The parties shall make every effort to comply with the above page limitations.

(e) Permission to increase the length of a brief shall be sought by motion, but shall only be granted upon a showing of good cause.

(11) Sanctions. Failure of a party to file a brief conforming to the requirements of this administrative regulation or failure of a party to timely file a response may be grounds for the imposition of one (1) or more of the following sanctions:
(a) Affirmation or reversal of the final order;
(b) Rejection of a brief that does not conform as to organization or content, with leave to refile in proper form within ten (10) days of the date returned. If timely refiled occurs, the filing shall date back to the date of the original filing;
(c) Striking of an untimely response;
(d) A fine of not more than $500; or
(e) Dismissal.

(12) Motions.
(a) Except for a brief, a motion or pleading shall require the original to be filed with the Executive Director of the Office of Workers' Claims.
(b) The style of the case, including the claim number and title of the motion or pleading, shall appear on the first page of the motion or pleading.
(c) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in response. To be considered, a response shall be filed within ten (10) days of the motion. Further responses shall not be filed.
(d) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating those facts.
(e) Every motion and response, the grounds of which depend upon the existence of facts which the moving or responding party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.
(f) Before filing a motion or pleading with the Executive Director of the Office of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of the document on each adverse party.

(g) The filing of a motion to dismiss an appeal shall stay the remaining time for the filing of a responsive pleading. If the petitioner's brief has been previously filed and a motion to dismiss has been denied, the respondent shall have fifteen (15) days from the order to file a respondent's brief.
(h) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of a motion. An intermediate order may be issued on the signature of any board member.

(13) Oral arguments.
(a) Upon motion of a party or upon the board's own motion, the board may order an oral argument on the merits in a case appealed from a decision, award or order of an administrative law judge.
(b) Oral arguments shall occur on a date and at a time and location specified by the board.
(c) Appeals designated for oral argument shall be held in abeyance and all subsequent appeal time in the case shall be calculated from the date of the oral argument.

(14) Continuation of benefits pending appeal.
(a) Benefits awarded by an administrative law judge which are not contested shall be paid during the pendency of an appeal. A motion requesting the payment of these benefits shall not be required. Uncontested benefits shall include income benefits at an amount lesser than what was awarded if the issue on appeal addresses the amount of benefits to be awarded as opposed to the entitlement to income benefits.
(b) Upon the motion of a party pursuant to KRS 342.300, the board may order payment of benefits pending appeal in conformity with the award, decision, or order appealed from.
(c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion establishing that:
1. The probability of the existence in fact of:
   a. Financial loss;
b. Privation, suffering, or adversity resulting from insufficient income; or
c. Detriment to the moving party's property or health if payment of benefits is not instituted; and

2. There exists a reasonable likelihood that the moving party will prevail on appeal.

(d) Any response to a motion for continuation of an award pending appeal shall be served within ten (10) days from the date of the request and, thereafter, the request shall be ripe for a decision.

(a) Entitlement to relief by the moving party and responses shall be shown by:
1. Affidavit if the grounds for the motion or response depend upon the existence of facts not in evidence; or
2. Supporting memorandum citing to evidence existing within the record and making reference to the place in the record where that evidence is found.

(15) Decisions.
(a) The board shall:
1. Enter its decision affirming, modifying, or setting aside the order appealed from; or
2. Remand the claim to an administrative law judge for further proceedings.

(b) Motions for reconsideration shall not be permitted.

(c) The decision of the administrative law judge shall be affirmed if:
1. A board member is unable to sit on a decision; and
2. The remaining two (2) board members cannot reach an agreement on a final disposition.

(16) Appeal from board decisions. If applicable, pursuant to KRS 342.290, the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

Section 22. Coverage - Insured Status. Upon the filing of an application for resolution of claim, the executive director shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the executive director shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 23. Withdrawal of Records. (1) A portion of any original record of the office shall not be withdrawn except upon an order of the executive director, an administrative law judge, or a member of the board.

(2)(a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final except x-rays in coal workers' pneumoconiosis claims which shall be returned to the party who filed the x-ray.

(b) A party filing an exhibit may make arrangements to claim an exhibit prior to that time.

(c) If an unclaimed exhibit has no money value, it shall be destroyed.
2. If an unclaimed exhibit has a value of more than $100, it shall be sold as surplus property.
3. If an unclaimed exhibit has a value of less than $100, it shall be donated to the appropriate state agency.
4. If an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 24. Sanctions. (1) Pursuant to KRS 342.310, an administrative law judge or the board may assess costs upon a determination that the proceedings have been brought, prosecuted, or defended without reasonable grounds.

(2) A sanction may be assessed against an offending attorney or representative rather than against the party.

(3) If a party is a governmental agency and attorney's fees are assessed, the fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar services had a private attorney been retained.

(4) Failure of a party to timely file a pleading or document or failure to comply with the procedures required by this administr-
(q) Form 111- Injury and Hearing Loss, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Office of Workers' Claims;
(r) Form 111-DD, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Office of Workers' Claims;
(s) Form 115, "Social Security [Earning—Record] Release Form", (January 1, 1997 Edition); and Office of Workers' Claims;
(t) Form AWW - 1, "Average Weekly Wage Certification [Form]", (January 1, 1997 Edition), Office of Workers' Claims;
(v) Six (6) Percent Present Value Table (May, 1997 Edition);
(w) Form MIR-1, Motion for Interlocutory Relief (May 29, 1997 Edition);
(x) [i][i] Form MIR-2, Affidavit for Payment of Medical Expenses (May 29, 1997 Edition);
(y) [i][i] Form MIR-4, Affidavit for Payment of Temporary Total Disability (May 29, 1997 Edition);
(z) [i][a] Form MIR-4, Affidavit Regarding Rehabilitation Services (May 29, 1997 Edition);
(aa) [i][a] Form VRT, Petition for Vocational Rehabilitation Training (April 2005 Edition);
(bb) [i][b] Form MTR-1, Motion to Reopen by Employee (May 29, 1997 Edition);
(cc) [i][c] Form MTR-2, Motion to Reopen KRS 342.732 Benefits (May 29, 1997 Edition);
(dd) [i][d] Form MTR-3, Motion to Reopen by Defendant (May 29, 1997 Edition);
(ef) [i][e] Form WVJ, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation (April 2005 Edition);
(gg) [i][f] Form UF-E, Motion for Payment from Uninsured Employers' Fund (April 2005 Edition); and
(hh) [i][g] Form 11, Motion to Substitute Party and Continue Benefits (January 31, 2005).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: June 8, 2006
FILED WITH LRC: June 8, 2006 at noon
CONTACT PERSON: Carla H. Montgomery, General Counsel, Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5552, ext. 4464, fax (502) 564-0681.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Kentucky Board of Home Inspectors
(As Amended at ARRS August 6, 2006)

815 KAR 6:010. Home Inspector licensing requirements and maintenance of records.

RELATES TO: KRS 198B.700, 198B.706, 198B.712, 198B.714, 198B.722, 198B.724
STATUTORY AUTHORITY: KRS 198B.706
NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(1) and (15) require [requires] the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738 and to establish requirements for licensing and certification as well as prescribing forms and applications. KRS 198B.706(7) requires the board to inspect the records of a licensee, [—and] KRS 198B.706(11) requires the board to establish continuing education requirements. KRS 198B.722 requires the board to set the requirements for renewal of licenses. This administrative regulation establishes the licensure and record requirements for home inspectors.

Section 1. Definitions. (1) "Applicant" is defined by KRS 198B.700(1).
(2) "Board" is defined by KRS 198B.700(2).
(3) "Licensee" is defined by KRS 198B.700(7).

Section 2. Application Requirements. (1) Applicants for a home inspector license shall submit the following:
(a) A properly completed "Application for Licensure as a Kentucky Home Inspector", Form KBH 17, [April, 2006], which is incorporated by reference; and
(b) A nonrefundable fee of $250.
(2) Except for an applicant applying pursuant to KRS 198B.736 [in addition to the application requirements set forth in KRS 198B.706(6) and 198B.712], an applicant for a home inspector license [also] shall:
(a) Complete and pass a board-approved, prelicensing training course administered by a provider who has been approved by the board in accordance with 815 KAR 6:040. For applicants who were in the home inspection business on or before May 9, 2006 [the effective date of this administrative regulation], the board may consider and approve training courses that are equivalent to the requirements of subsection (8) of this section; and
(b) Pass an examination conducted by a test provider approved by the board.
(3) Requests to sit for the examination shall be made directly to the test provider.
(4) The examination fee shall be set by the testing company and shall be paid directly to the test provider.
(5) A passing score on the examination shall be valid for a period of three (3) years.
(6) Failing the examination.
(a) An applicant who fails to pass the examination two (2) times shall wait at least fourteen (14) days prior to retaking the examination.
(b) An applicant who fails to pass the examination three (3) or more times shall wait at least thirty (30) days prior to retaking the examination.
(7) Procedures and conduct.
(a) The applicant shall follow:
1. Procedures and appropriate conduct established by the board or testing service administering an examination if the procedures and conduct requirements are provided or made available to each applicant or orally announced before the start of the examination; and
2. Written instructions communicated prior to the examination date and any instructions communicated at the testing site, either written or oral, on the date of the examination.
(b) Failure to comply with all procedures established by the board or the testing service with regard to conduct at the examination may be grounds for denial of the application.
(8) Course requirements. A prelicensing training course approved by the board shall require a minimum of:
(a) Sixty-four (64) credit hours of training in the following subject areas for at least the number of hours specified:
   1. Manufactured housing - three (3) hours;
   2. Standards of practice, licensing law and regulations, contracts, report writing and communications - [eleven (11) [twelve (12)] hours;]
   3. Exterior, roofing, insulation and ventilation - six (6) hours;
   4. Structure and interior - nine (9) hours;
   5. Electrical and plumbing - nine (9) hours;
   6. Heating and air conditioning - six (6) hours;
   7. Actual inspection [in-a-laboratory-setting] - sixteen (16) hours; with:
   a. Eight (8) hours in a laboratory; and
   b. Eight (8) hours in field training; and
   6. General residential construction - three (3) hours; and
   8. Environmental hazards, mitigation, water quality and indoor air quality - one (1) hour; and
(b) The completion of three (3) unpaid home inspections with
satisfactory written reports submitted to the course provider; and
(c) An exit examination that students shall pass.
(9) Criminal background checks and other disciplinary proceedings.
(a) Each applicant shall undergo a state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check and submit the results of the check along with the applicant's application.
(b) If an applicant has resided in a state for less than five (5) years prior to application, the applicant shall also obtain and submit a state-wide criminal background check from the state where the applicant previously resided.
(c) The board may deny or refuse to license an applicant or licensees who:
1. Has been convicted of a:
   a. Felony;
   b. Crime involving theft or dishonesty; or
   c. Sex offense; or
2. Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee.

Section 3. Alternative Requirement Licensing. (1) Pursuant to KRS 198B.736, an applicant may be granted a license based upon years of experience and number of home inspections performed without having to meet the prelicensing course and examination requirements of Section 2 of this administrative regulation.
(2) An applicant applying under this provision shall:
(a) Submit a properly completed Form KBHI 1; and
(b) Pay a nonrefundable fee of $250.
(3) An applicant seeking a license under this section shall submit a properly completed Form KBHI 1 on or before December 29, 2006.

Section 4. Reciprocity. (1) Pursuant to KRS 198B.714, an applicant may obtain a license by reciprocity.
(2) An applicant seeking a license through reciprocity shall:
(a) Submit a properly completed Form KBHI 1;
(b) Pay a nonrefundable fee of $250; and
(c) Meet the conditions of KRS 198B.714 [and applicable provisions of Section 2 of this administrative regulation].

Section 5. Nonresident Licensees. Nonresident licensees shall:
(1) Submit a fully completed Form KBHI 1;
(2) Pay a nonrefundable fee of $250; and
(3) Comply with the provisions set forth in KRS 1988 716 and [Section 2 of this administrative regulation].

Section 6. Renewal of Licenses. (1) In addition to the requirements set forth in KRS 198B.722, to renew a license, the licensee shall:
(a) Satisfy the continuing education requirements of Section 7 of this administrative regulation;
(b) Pay a nonrefundable renewal fee of $250 per year;
(c) Submit a fully-completed "Application for Renewal of Kentucky Home Inspector License," Form KBHI 2, April, 2006, which is incorporated by reference; and
(d) Submit a copy of a completed inspection report that has been compiled within the previous twelve (12) months immediately preceding renewal [state-wide background check administered by a law enforcement agency that can conduct a state-wide check].
(2) A licensee who qualified for licensure under the alternative requirement provisions of Section 3 of this administrative regulation shall obtain the following prior to the licensee's first renewal:
(a) At least three (3) hours of continuing education in manufactured housing;
(b) At least six (6) hours of continuing education in Kentucky laws and administrative regulations; and
(c) At least six (6) hours of continuing education in the standards of practice.

Section 7. Continuing Education. (1) The continuing education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.
(2) Each licensee shall be required to have at least fourteen (14) hours of continuing education per license year.
(3) Prior to any renewal, the continuing education shall consist of a minimum of the following:
(a) Three (3) hours in manufactured housing;
(b) Three (3) hours in Kentucky laws and administrative regulations; and
(c) Six (6) hours in applicable standards of practice.
(4) Continuing education shall [may only] be obtained from those providers approved by the board as provided in 815 KAR 6:040.

Section 8. Maintenance of Records. (1) Address
(a) A license holder shall report any change of address to the board in writing within thirty (30) days after the [such] change.
(b) The board shall not be responsible for the license holder's failure to receive notices, communications, and correspondence caused by the license holder's failure to promptly notify the board of a change of address.
(2) Names
(a) A license holder shall notify the board in writing of a name change within thirty (30) days of the [such] change.
(b) The [Such] notification shall be accompanied by a copy of a marriage certificate, divorce decree, court order, or other documentation that verifies the name change.
(3) Inspection records
(a) A licensed home inspector shall retain the following records for a period of three (3) years from the date of the inspection:
1. The written reports;
2. The contract; and
3. Any supporting documentation.
(b) Records may be retained in retrievable, electronic format.
(c) The licensee shall not destroy any records, if notified by the board that it is requesting the [these] records.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Licensure as a Kentucky Home Inspector," Form KBHI 1, August [April], 2006; and
(b) "Application for Renewal of Kentucky Home Inspector License," Form KBHI 2, April, 2006 [as incorporated by reference].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, 101 Seacoast Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WITHERS, Secretary
CHRISTOPHER LILLY, Commissioner
RAY SANDBEK, Chairman
APPROVED BY AGENCY: May 1, 2006
FILED WITH LRC: May 9, 2006 at 11 a.m.
CONTACT PERSON: David Reilich, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

gnvironmental and public protection cabinet
Office of housing, buildings and construction
Board of home inspectors
(As Amended at ARRS, August 8, 2006)


RELATES TO: 198B.706(15)
STATUTORY AUTHORITY: 198B.706
NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706 requires the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 1983 700 to 1983:738. This administrative regulation estab-
lishes guidelines for advertising by home inspectors, so that customers and citizens may properly identify licensed inspectors.

Section 1. License Number to be Displayed. Except as provided in Section 2 of this administrative regulation, every person holding himself out as a home inspector shall display his license number on all advertising disseminated, directly or indirectly, to the general public.

Section 2. Exceptions. This administrative regulation shall not apply to novelty items distributed by the licensed home inspector.

Section 3. Vehicle Identification. All vehicles used in advertising the operation of a home inspector business shall bear the license number of the home inspector in a conspicuous location and shall be composed of letters and numbers not less than three (3) inches high. The numbers and letters of the license shall be visible and legible at all times that the vehicle is being operated.

Section 4. Entries. [Whenever a license number is required to be displayed in connection with an advertisement,] if the home inspector is operating under the name of an entity, the requirements of this administrative regulation shall be [are] satisfied by displaying the license number of one of the principals of that entity.

JOHN W. CLAY, Deputy Secretary
For LAUJANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
RAY SANDBEK, Chairman
APPROVED BY AGENCY: May 1, 2006
FILED WITH LBC: May 9, 2006 at 11 a.m.
CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, 100 Suite, Frankfort, Kentucky 40601-4505, phone (502) 573-0365, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Board of Home Inspectors
(As Amended at ARRS, August 8, 2006)


RELATES TO: 198B.706, 198B.728
STATUTORY AUTHORITY: 198B.706
NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.736. KRS 198B.706(13) authorizes the board to establish standards of practice for home inspectors. This administrative regulation establishes standards of conduct for home inspectors.

Section 1. Standards of Conduct. A licensed home inspector or an entity under which the inspector conducts business, shall:

(1) Act as an unbiased third party to the real estate transaction;
(2) Discharge the duties of a home inspector with integrity and fidelity to the client;
(3) Express an opinion on any aspect of the inspected property only if [when] that opinion is based upon the experience, training, education, and personal opinion of the inspector;
(4) Provide a written disclosure to the client of any interest the inspector maintains in the transaction and advise the client to obtain competitive bids before products or additional services are offered by the licensee including:
(a) Products or additional services to be purchased from or provided by the inspector, his agents, or employees;
(b) Products or additional services to be purchased from or provided by any entity, organization, or venture in which the inspector has an interest;
(c) Products or additional services to be purchased which will result in any additional compensation or benefit to the inspector, financial or otherwise; and
(i) Provide the license number, following the licensee's signature, on any document signed by the home inspector pertaining to the home inspection.

Section 2. Additional Standards. In addition to the affirmative duties imposed by Section 1 of this administrative regulation, a licensed home inspector or an entity under which the licensee conducts business, shall not:

(1) Engage in or knowingly cooperate in the commission of fraud or material deception to obtain a license to engage in the practice of home inspection, including cheating on the licensing examination;
(2) Perform repairs or modifications for compensation, or for other direct or indirect financial benefit, to a residential dwelling within twelve (12) months after performing a home inspection on the same residential dwelling, [if [where] the repairs or modifications are based upon the findings in the home inspection report. This subsection shall not apply if [in cases where] the home inspector purchases the residence after performing the inspection;
(3) Provide a home inspection to the client that does not conform to the Standards of Practice selected on the initial application for licensure or the application for renewal submitted pursuant to 815 KAR 6:010;
(4) Provide services that constitute the unauthorized practice of any profession that requires a special license if the home inspector does not hold that license;
(5) Provide any compensation, inducement, or reward, either directly or indirectly, to any person or entity other than the client for the referral of business to the inspector. The purchase or use of advertising, marketing services, or products shall not be [is not] considered compensation, inducement, or reward;
(6) Conduct a home inspection or prepare a home inspection report for which the inspector's fee is contingent upon the conclusions contained in the report;
(7) Misrepresent the financial interests, either personally or through his or her employment, of any of the parties to the transfer or sale of a residential dwelling upon which the licensee has performed a home inspection;
(8) Disclose any information concerning the results or content of the home inspection report without the written approval of the client for whom the home inspection was performed. However, the home inspector may disclose information if [where] there is an imminent danger to life, health, or safety, or where the home inspector is compelled to disclose information by court order;
(9) Accept compensation, financial or otherwise, from more than one (1) interested or affected party for the same home inspection on the same property without the written consent of all interested parties;
(10) Make a false or misleading representation regarding:
(a) The condition of a residential dwelling for which the licensee has performed or contracted to perform a home inspection;
(b) The extent of the services the licensee has performed or will perform; or
(c) The type of license held by the licensee;
(11) Be convicted of a crime in the course of the practice of home inspection or commit any act constituting a violation of state law during the course of a home inspection;
(12) Make a false or misleading representation:
(a) In a license or renewal application form or
(b) In information provided to the board;
(13) Fail to pay any fees required by 815 KAR 6:010 [the administrative regulation];
(14) Fail to continuously maintain the insurance or other evidence of financial responsibility required by KRS Chapter 198B or 815 KAR Chapter 6 [a statute or regulation];
(15) Engage in any course of deed or immoral conduct in connection with the delivery of services to clients;
(16) Fail to complete the continuing education requirements established by the board in 815 KAR 6:010;
(17) Use the term "certified" in advertising, unless the certification is current and the full name of the certifying body is clearly identified;
(18) Use the term "fully insured," unless the person or entity has business liability and worker's compensation insurance coverage in effect at the time of the advertisement;
(19) Continue to practice, if the licensed home inspector has become unfit to practice due to:
Section 2. Registration Requirements. (1) Applicants to be a prelicensing course provider shall submit the following:
(a) A properly completed "Application for Approval as a Prelicensing Course Provider for Home Inspectors," Form KBHI 3[r], which is incorporated by reference;
(b) A nonrefundable fee of $500;
(c) [Such] Information required [as is necessary] to demonstrate that its course meets the requirements of 815 KAR 6:010, Section 2(8); and
(d) A surety bond in a form acceptable to the board and in the amount of $50,000.
(2) Applicants to be a continuing education course provider shall submit the following:
(a) A properly completed "Application for Approval as a Continuing Education Course Provider for Home Inspectors," Form KBHI 4[r], which is incorporated by reference; and
(b) A nonrefundable fee of $100.

Section 3. Renewals. (1) Provider registration shall expire every two (2) years
(2) To renew its registration, each provider shall submit the [same] application and fee required [as is submitted] for its initial registration.

Section 4. Required records. (1) Each [course] provider shall maintain the following records with respect to each course:
(a) The time, date, and place each course is completed;
(b) The name, address, and qualifications of each instructor who teaches any portion of the course and whether each instructor has been approved by the board;
(c) The name, address, and license number, if applicable, of each person who registered for the course;
(d) The original sign-in sheet used at the site of the course to register persons who attend each course. The sign-in sheet shall require every person to print their name, list their license number, if applicable, and sign their name;
(e) The course syllabus used for each course, and
(f) The course evaluations.
(2) The [course] provider shall issue to each person who successfully completes an approved course, a certificate of completion containing the following:
(a) The name of the attendee;
(b) The license number, if applicable, of the attendee;
(c) The name of the [course] provider;
(d) The course name;
(e) The course number;
(f) The date of the course; and
(g) The total number of contact hours successfully completed in each subject covered by the course.
(3) Each provider shall maintain its records for at least three (3) years after the completion of each course. These records shall be submitted to the board or its agents upon request.
(4) Each provider shall submit to the board, in writing, notice of any changes in the information provided in the initial registration of the provider. The notification shall be made within thirty (30) days following the date the change is effective.

Section 5. Approval of Continuing Education Courses. (1) A continuing education provider shall submit a request for approval of a continuing education course which shall include the following:
(a) The total number of contact hours;
(b) The course syllabus;
(c) A detailed outline of the contents of the course;
(d) The name and qualifications of all instructors known at the time of the request for approval; and
(e) The minimum qualifications of any instructors not known at the time of the request for approval.
(2) The fee for course approvals shall be twenty-five (25) dollars per class, per date offered. [In no event shall] A continuing education provider shall not pay in excess of $250 ($500) in course approval fees in any one (1) year.
(3) The board shall approve continuing education courses which:
(a) Appropriately relate to the general business skills or the
technical skills required of licensees;  
(b) Contain sufficient educational content to improve the quality of licensee performance;  
(c) Are taught by qualified instructors; and  
(d) Have a course evaluation.  

(4) Continuing education course approval shall be valid for two (2) years from date of issue. If no substantial change is made in the course and if the registration of the provider has not expired or been suspended or revoked, substantial changes made in any course shall require a new approval of that course. A provider shall reapply for course approval ninety (90) days prior to the date of expiration of the previous course approval.  

(5) A course which has been denied may be resubmitted to the board with modifications.  

(6) If a course is approved, the board shall assign the course a number. The course provider shall use the course number in the course syllabus, in all other course materials used in connection with the course, and in all written advertising materials used in connection with the course.  

Section 6. Qualifications of Course Instructors. (1) All course instructors shall be qualified, by education or experience, to teach the course, or parts of a course, to which the instructor is assigned.  

(2) Any person with a four (4) year college degree or graduate degree shall be [is] qualified to teach a continuing education or prelicensing [any] course in their field of study.  

(3) A licensee whose license is suspended or revoked as a result of board discipline shall not teach or serve as a course instructor during the time the license is suspended or revoked.  

(4) A course provider may request prior approval by the board regarding the qualifications of a particular instructor for a particular course.  

Section 7. Course Syllabus. (1) Each course shall have a course syllabus that identifies:  
(a) The name of the course;  
(b) The number of the course;  
(c) The name and address of the course provider; and  
(d) A description or outline of the contents of the course.  

(2) Each person who registers for a course shall be given the course syllabus prior to the beginning of the course. The syllabus may be distributed when the person registers their attendance at the course.  

Section 8. Course Advertising. (1) A course provider shall not advertise a course as one approved until the approval is granted by the board.  

(2) A course provider shall not include any false or misleading information regarding the contents, instructors, or number of contact hours of any course approved under this administrative regulation.  

(3) A course provider shall include its provider number and course numbers in all advertising.  

Section 9. Disciplinary Matters. (1) The board may deny, suspend, or revoke the registration of any prelicensing course or continuing education provider for any of the following acts or omissions:  
(a) Obtaining or attempting to obtain registration or approval through fraud, deceit, false statements, or misrepresentation;  
(b) Failing to provide complete and accurate information in the initial registration or in any notice of change in information;  
(c) Failing to timely notify the board of a change in the information required for registration of the provider;  
(d) Falsifying of any records regarding the courses conducted by the provider or the persons who attended the courses offered;  
(e) Failing to maintain any required records regarding course offerings conducted by the provider or the persons who attended the course;  
(f) Failing to adequately train the staff responsible for taking attendance at any approved course;  
(g) Failing to provide back to the board with copies of any document or other information required to be maintained by the provider pursuant to this administrative regulation;  
(h) Advertising that a provider has been approved by the board prior to the date the approval is granted;  
(i) Failing to include provider and course numbers in advertisements;  
(j) Failing to maintain a record of instructors;  
(k) Failing to resolve attendance reporting problems; and  
(l) Failing to comply with any other duty imposed on providers by the administrative regulations.  

(2) Disciplinary action shall be initiated by the board by written notice to the [course or provider] by certified mail, return receipt requested, to the provider's address on file with the board.  

(3) A [course or provider] may appeal a proposed disciplinary action by notifying the board in writing within ten (10) days of its desire to appeal.  

(4) All appeals shall be governed in accordance with KRS Chapter 13B.  

(5) A provider whose registration has been revoked shall not reapply for registration for two (2) years from the date of revocation.  

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:  
(a) "Application for Approval as a Prelicensing [Pre-Licensure] Course Provider for Home Inspectors, Form KBII 3", April, 2006; and  
(b) "Application for Approval as a Continuing Education Course Provider for Home Inspectors, Form KBII 4", April, 2006.  

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.  

JOHN W. CLAY, Deputy Secretary  
For LAJUANA S. WILCHER, Secretary  
CHRISTOPHER LILLY, Commissioner  
RAT SANDEEK, Chairman  
APPROVED BY AGENCY: May 1, 2006  
FILED WITH LRC: May 9, 2006 at 11 a.m.  
CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.  

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Long Term Care and Community Alternatives  
(As Amended at ARRS, August 8, 2006)  

907 KAR 1:145. Supports for community living services for an individual with mental retardation or a developmental disability.  

RELATES TO: KRS 205 520, 205 5603, 42 C F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, n  
STATUTORY AUTHORITY: KRS 194A 020[194.080][2], 194A 060(1), 205 520(3), 205 6317  
NECESSITY, FUNCTION, AND CONFORMITY: [50-2004- 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 Medicaid Program, KRS 205 520(3) authorizes the cabinet, by administrative regulation, to comply with any a 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 coverage provisions relating to home and community-based services provided to an individual with mental retardation or a developmental disability as an alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability.  

Section 1. Definitions. (1) "Assessment" or "reassessment"
(a) Completed on a MAP-351B;
(b) Submitted to the department for a level of care determination; and
(c) Conducted prior to an individual’s initial admission to the waiver and at least annually thereafter.

(2) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an SCL recipient.

(3) "Behavior support specialist" means an individual who has a master’s degree with formal graduate coursework in a behavioral science and at least one (1) year of experience in behavioral programming.

(4) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS 319.053 or 319.056 [319.000 through 319.099].

(5) "DCBS" means the Department for Community Based Services.

(6) "Department" means the Department for Medicaid Services or its designee.

(7) "Developmental disability" means a disability that;
(a) Is manifested prior to the age of twenty-six (26); or
(b) If a person is blind or visually impaired, includes a substantial disability to the affected individual; and
(c) Is attributable to mental retardation or related conditions that;
1. Result in impairment of general intellectual functioning and adaptive behavior similar to that of a person with mental retardation; or
2. Are a direct result of, or are influenced by, the person’s substantial cognitive deficits.

(8) "DHMR" means the Department for Mental Health and Mental Retardation Services.

(9) "DMR" means the Division of Mental Retardation in the Department for Mental Health and Mental Retardation Services.

(10) "Electrical signature" is defined in KRS 257.100.

(11) "Good cause" means a circumstance beyond the control of an individual that affects the individual’s ability to access funding or services, which includes:
(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;
(b) Death or incapacitation of the primary caregiver;
(c) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less;
(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day period or
(e) The individual is residing in a facility and is actively participating in a transition plan to community based services, the length of which is greater than sixty (60) days but less than one (1) year.

(12) "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.

(13) "ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.

(14) "ISP" means a written individualized plan developed by an SCL recipient, or an SCL recipient’s legal representative, support coordinator, or others designated by an SCL recipient.

(15) "Level of care determination" means a determination by the department that an individual meets low-intensity or high-intensity patient status criteria in accordance with 907 KAR 1:022.

(16) "Licensed marriage and family therapist" or "LMFT" means a person licensed pursuant to KRS 335.300 to 335.399.

(17) "Licensed professional clinical counselor" or "LPC" means a person licensed pursuant to KRS 335.500 to 335.599.

(18) "Medically necessary" or "medical necessity" means that covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(19) "Mental retardation" means that a person has:
(a) Significantly sub-average intellectual functioning;
(b) An intelligence quotient of approximately seventy (70) or below;
(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:
1. Communication;
2. Self-care;
3. Home living;
4. Social or interpersonal skills;
5. Use of community resources;
6. Work;
7. Self-direction;
8. Functional academic skills;
9. Leisure or recreation;
10. Health and safety; and
(d) Has [with an onset before eighteen (18) years of age.]
(19) [409] "Occupational therapist" means an individual who is licensed as defined in accordance with KRS 319A.010.

(20) [409] "Physical therapist" means an individual who is licensed as defined in accordance with KRS 327.010.

(21) [409] "Psychologist" means an individual who is licensed in accordance with KRS 319.050.

(22) [416] "Qualification mental retardation professional" or "QMRF" means an individual who has at least one (1) year of experience with persons with mental retardation or developmental disabilities and meets the professional criteria in accordance with KRS 327.342.

(23) [409] "Registered nurse" or "RN" means a person who is currently licensed as defined in [pursuant to] KRS 314.011(56), and who has one (1) year or more experience as a professional nurse.

(24) [479] "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

(25) [446] "SCL recipient" means an individual who meets the criteria established in Section 2 of this administrative regulation.

(26) [479] "Supports for community living" or "SCL" means home and community-based waiver services for an individual with mental retardation or a developmental disability.

Section 2. SCL Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the SCL program, an individual shall:
(a) Be placed on the SCL waiting list in accordance with Section 6 of this administrative regulation;
(b) Receive notification of potential SCL funding in accordance with Section 6 of this administrative regulation;
(c) Meet ICF-MR-DD patient status [level-of-care] requirements established in 907 KAR 1:022;
(d) Meet Medicaid eligibility requirements established in 907 KAR 1:065;

(e) Submit an application packet to DHMR which shall contain:
1. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350;
2. The Freedom of Choice Home and Community Based Waiver for Persons with MR-DD Service Providers Form, MAP-4102;
3. The MAP-351B Assessment Form;
4. The level of care determination;
5. The results of a physical examination that was conducted within the last twelve (12) months;
6. [8] A statement of [for] the need for long-term care services which shall be signed and dated by a physician or a QMRF and be less than one (1) year old;
7. [6] The results of a psychological examination completed by a licensed psychologist;
8. [7] A social case history which is less than one (1) year old;
9. [8] A projection of the needed supports and a preliminary
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1. A statement of the intended action;
2. The basis for the intended action;
3. The authority by which the action is taken; and
4. The SCL recipient's right to appeal the intended action through the provider's appeal or grievance process;
(b) Submittal of a DMR-001 to DMHMR at least twenty (20) days prior to the effective date of the intended action; and
(c) The case manager [support coordinator] in conjunction with the provider to:
   1. Provide the SCL recipient with the name, address, and telephone number of each current SCL provider in the state;
   2. Provide assistance to the SCL recipient in making contact with another SCL provider;
   3. Arrange transportation for a requested visit to an SCL provider site;
   4. Provide a copy of pertinent information to the SCL recipient or legal representative;
   5. Ensure the health, safety and welfare of the SCL recipient until an appropriate placement is secured; and
6. Continue to provide supports until alternative services or another placement is secured; and
7. Provide assistance to ensure a safe and effective service transition.
7. (7) Voluntary termination and loss of an SCL waiver program placement shall be initiated if an SCL recipient or legal representative submits a written notice of intent to discontinue services to the service provider and to DMHMR.
   (a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and
   (b) The SCL recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 3. Provider Participation. (1) In order to provide an SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:
(a) Be certified by the department prior to the initiation of the service;
(b) Be recertified at least annually by the department; and
(c) Have a main office within the Commonwealth of Kentucky.
(2) An SCL provider shall comply with 907 KAR 1.671, 907 KAR 1.672, 907 KAR 1.673 and 902 KAR 20.078.
(3) An SCL provider shall have a governing body that shall:
(a) Be a legally constituted entity within the Commonwealth of Kentucky;
(b) Not contain a majority of owners;
(c) Be responsible for the overall operation of the organization that shall include:
   1. Establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety, and welfare of an SCL recipient supported by the agency;
   2. Appointing and annually evaluating the executive director;
   3. Delegating the authority and responsibility for the management of the affairs of the agency in accordance with written policy and procedures that comply with this administrative regulation;
   4. Meeting as a whole at least quarterly to fulfill its ongoing responsibility and maintaining a record of the discharge of its duties; and
5. Orienting a new member of the governing body to the operation of the organization.
(4) An SCL provider shall:
(a) Ensure that an SCL waiver service is not provided to an SCL recipient by a staff member of the SCL provider who has one (1) of the following blood relationships to the SCL recipient.
   1. Child;
   2. Parent;
   3. Sibling; or
   4. Spouse;
(b) Not enroll an SCL recipient for whom they cannot meet the support needs;
(c) Have and follow written criteria that comply with this administrative regulation for determining the eligibility of an individual for admission to services; and
(d) Document any denial for a service and the reason for the
denial, and identify resources necessary to successfully support the denied SCL recipient in the community.

(5) An SCL provider shall maintain documentation of its operations which shall include:

(a) An annual review of written policy and procedures;
(b) A written description of available SCL waiver services;
(c) A current table of organization;
(d) A memorandum of understanding with an SCL case management [support coordination] provider with whom they share individual support plans;
(e) Information regarding satisfaction of an SCL recipient and the utilization of that information; and
(f) A quality improvement program; and
(g) Documentation of achievement of outcomes based on best practice standards as approved by the department.

(6) An SCL provider shall:
(a) Maintain accurate fiscal information which shall include documentation of revenue and expenses;
(b) Maintain a written schedule of policy relevant to rates and charges that shall be available to any individual upon request;
(c) Meet the following requirements if responsible for the management of SCL recipient funds:
1. Separate accounting shall be maintained for each SCL recipient or for his or her interest in a common trust or special account;
2. Account balance and records of transactions shall be provided to the SCL recipient or legal representative on a quarterly basis; and
3. The SCL recipient or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.
(7) An SCL provider shall have a written statement of its mission and values, which shall:
(a) Support empowerment and informed decision-making;
(b) Support and assist people to remain connected to natural support networks; and
(c) Promote dignity and self-worth.
(8) An SCL provider shall have written policy and procedures for communication and interaction with a family and legal representative of an SCL recipient which shall:
(a) Require a timely response to an inquiry;
(b) Require the opportunity for interaction by direct care staff;
(c) Require prompt notification of any unusual occurrence;
(d) Require visits to the SCL recipient at a reasonable time, without prior notice and with due regard for the SCL recipient's right of privacy;
(e) Require involvement in decision making regarding the selection and direction of the service provided; and
(f) Consider the cultural, educational, language, and socioeconomic characteristics of the family being supported.

(9) An SCL provider shall ensure the rights of an SCL recipient by:
(a) Making available a description of the rights and the means by which they can be exercised and supported which shall include:
1. The right to time, space, and opportunity for personal privacy;
2. The right to communicate, associate and meet privately with the person of choice;
3. The right to send and receive uncensored mail;
4. The right to retain and use personal possessions including clothing and grooming articles; and
5. The right to private, accessible use of the telephone;
(b) Having a grievance and appeals system that includes an external mechanism for review of complaints; and
(c) Establishing a human rights committee which shall:
1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;
2. Be separate from the human rights committee;
3. Review and approve prior to implementation and at least every six (6) months, in conjunction with the SCL recipient's team, behavior support plans that include highly restrictive procedures or contain rights restrictions; and
4. Review the use of a psychotropic medication by an SCL recipient with no Axis I diagnosis;
(d) Establishing a behavior intervention committee which shall:
1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;
2. Be separate from the human rights committee;
3. Review and approve prior to implementation and at least every six (6) months, in conjunction with the SCL recipient's team, behavior support plans that include highly restrictive procedures or contain rights restrictions; and
4. Review the use of a psychotropic medication by an SCL recipient with no Axis I diagnosis and recommend an alternative intervention when appropriate, and
(e) Complying with the Americans with Disabilities Act (28 C.F.R. 35);

(10)(a) An SCL provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that:
1. A covered service is provided; or
2. The recipient turns twenty-one (21), if the recipient is under the age of twenty-one (21);
(b) All records and incident reports shall be made available to:
1. The department;
2. DMHMR or its designee;
3. The Commonwealth of Kentucky, Cabinet for Health and Family Services, Office of Inspector General or its designee;
4. The United States General Accounting Office or its designee;
5. The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;
6. The Commonwealth of Kentucky, Office of the Attorney General or its designee; or
7. The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services [Pavilions and Children's Services]; or
8. The Centers for Medicare and Medicaid Services.

(11) An SCL provider shall cooperate with monitoring visits from monitoring agents.

(12) An SCL provider shall maintain a record for each SCL recipient served that shall:
(a) Be recorded in permanent ink;
(b) Be free from correction fluid;
(c) Have a strike through each error that is initiated and dated; and
(d) Contain no blank lines in between each entry.
(13) A record of each SCL recipient who is served shall:
(a) Contain all information necessary for the delivery of the SCL recipient's services;
(b) Be cumulative;
(c) Be readily available;
(d) Contain documentation which shall meet the requirements of Section 4 of this administrative regulation;
(e) Contain a legend that identifies any symbol and abbreviations used in making a record entry;
(f) Contain the following specific information:
1. The SCL recipient's name, Social Security number and Medicaid identification number (MAID);
2. The intake or face sheet;
3. The MAP-351B Assessment form completed at least annually (self-assessment):
4. [An assessment summary relevant to the service area;]
5. The current ISP
6. [The training objective for any support which facilitates achievement of the SCL recipient's chosen outcomes [provides skills training to the SCL recipient];
7. The service objective for those supports which do not provide skills training];
8. [A list containing emergency contact telephone numbers;]
9. [The SCL recipient's history of allergies with appropriate alternative allergens for severe allergies;]
10. The SCL recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;
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2. [144] A recognizable photograph (that is, less than one- (1) year-old) of the SCL recipient;

10. [142] Legally-adequate consent, updated annually, for the provision of services or other treatment [which shall include those] requiring emergency attention and shall be located at each service site;

11. [143] The individual educational plan (IEP) or individual family service plan (IFSP), if applicable;

12. [144] The SCL recipient's social history updated at least annually;

13. [145] The results of an annual physical exam;

14. [146] The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350 updated annually;

15. [143] Psychological evaluation;

16. [147] Original and current level of care certification; and

17. [147] The MAP-562K, Department for Community Based Services Notice of Availability for Long Term Care Waiver Agency/Hospice Agency in the management and residential record;

18. A copy of the approved SCL-1 form;

19. [139] Be maintained by the provider in a manner to ensure the confidentiality of the SCL recipient's record and other personal information and to allow the SCL recipient or legal representative to determine when to share the information as provided by law;

20. [140] Have the safety from loss, destruction or use by an unauthorized person ensured by the provider; and

21. [140] Be available to the SCL recipient or legal guardian according to the provider's written policy and procedures which shall include the availability of the record; and

22. [140] Have a corresponding legend which the provider shall make readily accessible.

(14) An SCL provider shall:

(a) Ensure that each staff, prior to providing direct care to a recipient, has tested negatively for tuberculosis within the past twelve (12) months; and

(b) Maintain documentation of each staff person's negative tuberculosis test;

(c) Have written personnel guidelines for each employee to include:

1. Salary range;

2. Vacation and leave procedures;

3. Health insurance;

4. Retirement benefits;

5. Opportunity for continuing education; and

6. Grievance procedures;

(c) Provide a written job description for each staff person which describes the employee's duties and responsibilities;

(d) Annually review each job description;

(e) For each potential employee, prior to employment, obtain a criminal record check from the Administrative Office of the Courts in each state in which the individual resided or worked in during the previous year; or

2. [1] For an employee who resided or worked outside the Commonwealth during the previous year, obtain a criminal record check from the Administrative Office of the Courts or the state's designated equivalent agency;

(f) For twenty-five (25) percent of employees, randomly selected, obtain a criminal record check from the Administrative Office of the Courts, or other states designated equivalent annually for each state in which the individual resided or worked in during the previous year;

(g) Obtain a criminal record check from the Administrative Office of the Courts prior to placement as a volunteer performing direct care staff or a supervisory function, and twenty-five (25) percent of volunteers, randomly selected, annually thereafter if the individual is placed;

(h) Prior to employment and annually thereafter if the individual is hired; and

2. Prior to placement as a volunteer performing direct care staff or a supervisory function, and annually thereafter if the individual is placed;

(i) Not employ or place an individual as a volunteer with a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction; and

(j) [93] Evaluate the performance and competency of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter.

(15) An SCL provider shall:

(a) Have an executive director who:

1. Has a bachelor's degree in administration or a human services field; or

2. Is a registered nurse; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served individuals with mental retardation or a developmental disability;

(b) Have a program director of the SCL waiver program who:

1. Has a minimum of one (1) year of previous supervisory responsibility in an organization which served individuals with mental retardation or developmental disabilities;

2. Is a QMRP; and

3. May serve as executive director if the requirements established in paragraph (a) of this subsection of this administrative regulation are met;

(c) Have adequate direct-contact staff who:

1. Has eighteen (18) years or older; and

2. [99] Has a high school diploma or GED; or

2. [99] Has at least twenty-one (21) years old; and

3. [99] Is able to adequately communicate with recipients and staff; and

(d) [93] Has a valid Social Security number or valid work permit if not a U.S. citizen;

3. [93] Can understand and carry out instructions; and

4. [93] Has ability to keep simple records; and

(d) Has adequate supervisory staff who:

1. Has eighteen (18) years or older; and

2. Has a high school diploma or GED; or

3. [93] Has at least twenty-one (21) years old; and

4. [93] Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability;

2. [93] Is able to adequately communicate with the recipients, staff, and family members;

3. [93] Has a valid Social Security number or valid work permit if not a U.S. citizen; and

4. [93] Has ability to perform required record keeping

(16) An SCL provider shall establish written guidelines that address the health, safety and welfare of an SCL recipient, which shall include:

(a) Ensuring the health, safety and welfare of the SCL recipient;

(b) Maintenance of sanitary conditions;

(c) Ensuring each site operated by the provider is equipped with:

1. An operational smoke detector placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations; one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(d) Ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by an SCL recipient not exceeding 120 [144]** degrees Fahrenheit;

(e) Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:

1. Safe storage and use of [common household items]; and

2. That firearms and ammunition are permitted:

a. Only in a family care home or an adult foster care home; and

b. Only if stored separately and under double lock;

(f) Establish written procedures concerning the safe storage of common household items;

(g) Ensuring that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(h) [93] Ensuring that staff administering medication:

1. Have specific training per a DMR-approved curriculm and documented competency on medication administration, medication cause and effect and proper administration and storage of medica-
tion; and
   2. Document all medication administered, including self-
      administered, over-the-counter drugs, on a medication log, with the
      date, time, and initials of the person who administered the medica-
      tion and ensure that the medication shall:
      a. Be kept in a locked container;
      b. If a controlled substance, be kept under double lock;
      c. Be carried in a proper container labeled with medication and
         dosage and accompany and be administered to an SCL recipient
         at a program site other than his or her residence if necessary; and
      d. Be documented on a medication administration form and
         properly disposed of, if discontinued, and
         (i) [N] Policy and procedures for ongoing monitoring of medica-
         tion administration.
   (17) An SCL provider shall establish and follow written guida-
      lines for handling an emergency or a disaster which shall:
      (a) Be readily accessible on site;
      (b) Include instruction for notification procedures and the use of
         alarm and signal systems to alert an SCL recipient according to his
         or her disability;
      (c) Include an evacuation drill to be conducted in three (3)
         minutes or less, [and] documented at least quarterly and scheduled
         to include a time when an SCL recipient is asleep; and
      (d) Mandate that the result of an evacuation drill be evaluated
         and modified as needed.
   (18) An SCL provider shall:
      (a) Provide orientation for each new employee which shall
         include the mission, goals, organization, and practice of the
         agency;
      (b) Provide or arrange for the provision of competency-based
         training to each employee to teach and enhance skills related to
         the performance of their duties;
      (c) Require documentation of all training which shall include:
         1. The type of training provided;
         2. The name and title of the trainer;
         3. The length of the training;
         4. The date of completion; and
         5. The signature of the trainee verifying completion;
      (d) Ensure that each employee prior to independent function-
         ing, completes training which shall include:
         1. First aid, which shall be provided by an individual certified as
            a trainer by the American Red Cross or other nationally-accredited
            organization;
         2. Cardiopulmonary resuscitation which shall be provided by
            an individual certified as a trainer by the American Red Cross or
            other nationally-accredited organization;
         3. Crisis prevention and management;
         4. Identification and prevention of abuse, neglect, and exploita-
            tion;[and]
      5. Rights of individuals with disabilities; and
      6. Individualized instruction on the needs of the SCL recipient
         to whom the trainee provides support;
      (e) Ensure that each employee that will be administering medica-
          tions, prior to independent functioning, completes training which
          shall include:
          1. Medication administration training per cabinet-approved
             curriculum;
          2. Medications and seizures;
          3. First aid, which shall be provided by an individual certified as
             a trainer by the American Red Cross or other nationally-accredited
             organization;
          4. Cardiopulmonary resuscitation which shall be provided by
             an individual certified as a trainer by the American Red Cross or
             other nationally-accredited organization;
          5. Crisis prevention and management;[and]
      6. Identification and prevention of abuse, neglect, and exploita-
         tion;[and]
      7. Rights of individuals with disabilities; and
      8. Individualized instruction on the needs of the SCL recipient
         to whom the trainee provides support;
      (f) Ensure that all employees complete core training, consistent
         with a DDHMR-approved curriculum, no later than six (6) months
         from the date of employment, which shall include:
         1. Values, attitudes, and stereotypes;
SCL waiver provider shall be covered by the department:
(a) Adult day training which shall:
1. Support the SCL recipient to participate in daily meaningful
routines in the community;
2. Stress training in:
   a. The activities of daily living;
   b. Self-advocacy;
   c. Adaptive and social skills; and
   d. Vocational skills;
3. Be provided in a nonresidential or community setting that
may (can):
   a. Be a fixed location; or
   b. Occur in public venues.
4. Not be dispensable in nature;
5. Be provided as on-site services which shall:
   a. Include facility-based services provided on a regularly-sched-
      uled basis;
   b. Lead to the acquisition of skills and abilities to prepare the
      participant for work or (and) community participation; or
   c. Prepare the participant for transition from school or work or
      adult support services;
6. Be provided as off-site services which fahll:
   a. Shall include services provided in a variety of community
      settings;
   b. Shall provide access to community-based activities that
      cannot be provided by natural or other unpaid supports;
   c. Shall be designed to result in increased ability to access
      community resources without paid support;
   d. Shall provide the opportunity for the participant to be in-
      volved with other members of the general population;
   e. May be provided as an enclave or group approach to train-
      ing in which participants work as a group or dispersed individu-
      ally throughout an integrated work setting with people without disabili-
      ties;
7. May be provided as a mobile crew performing work in a van-
   ary of community businesses or other community settings with
   supervision by the provider; and
8. May be provided as entrepreneurial or group approach to
   training for participants to work in a small business created specif-
   ically by or for the recipient or recipients;
9. Ensure that any recipient performing productive work that
benefits the organization be paid commensurate with compensa-
   tion to members of the general work force doing similar work;
10. Require that a provider conduct an orientation informing the
    recipient of supported employment and other competitive opportu-
    nitites in the community at least annually;
11. Be provided at a time mutually agreed to by the recipient
    and provider;
12. Be provided to recipients age twenty-two (22) or older;
13. Be provided to recipients age sixteen (16) to twenty-
    one (21) as a transition process from school to work or adult sup-
    port services.

(b) An assessment service including a comprehensive as-
    sessment which shall:
1. Identify an SCL recipient's needs and the services that the
    SCL recipient or his family cannot manage or arrange for on his
    behalf;
2. Evaluate an SCL recipient's physical health, mental health,
    social supports, and environment;
3. Be requested by an individual requesting SCL services or a
    family or legal representative of the individual;
4. Be conducted within seven (7) calendar days of receipt of
    the request for assessment;
5. Include at least one (1) face-to-face contact with the SCL
    recipient and, if appropriate, his family by the assessor in the SCL
    recipients home; and
6. Not be reimbursable if the individual does not receive a level
    of care certification;
(c) A reassessment service which shall:
1. Determine the continuing need for SCL waiver services;
2. Be performed at least every twelve (12) months;
3. Be conducted using the same procedures as for an assess-
    ment service;
4. Be conducted by a SCL case manager and submitted to the
    department no more than three (3) weeks prior to the expiration of
    the current level of care certification to ensure that certification is
    consecutive;
5. Not be reimbursable if conducted during a period that the
    SCL recipient is not covered by a valid level of care certification;
6. Not be retroactive;
(d) Behavioral support which shall:
1. Be the systematic application of techniques and methods to
   influence or change a behavior in a desired way;
2. Be provided to assist the SCL recipient to learn new behav-
   iors that are directly related to existing challenging behaviors or
   functionally equivalent replacement behaviors for identified chal-
   lenging behaviors;
3. Include a functional assessment [analysis] of the SCL re-
   cipient's behavior which shall include:
   a. An analysis of the potential communicative intent of the
      behavior;
   b. The history of reinforcement for the behavior;
   c. Critical variables that precede the behavior;
   d. Effects of different situations on the behavior; and
   e. A hypothesis regarding the motivation, purpose and factors
      which maintain the behavior;
4. [4.] Include the development of a behavioral support plan
   which shall
   a. Be developed by the behavioral specialist;
   b. Be implemented by [assigned] SCL provider staff in all rele-
      vant environments and activities;
   c. Be revised as necessary;
   d. Define the techniques and procedures used;
   e. Be designed to equip the recipient to communicate his or
      her needs and to participate in age-appropriate activities,
   [4.] Include the hierarchy of behavior interventions ranging
   from the least to the most restrictive;
   g. [5.] Reflect the use of positive approaches; and
   h. [6.] Prohibit the use of prene, or supine restraint, corporal
      punishment, seclusion, verbal abuse, and any procedure which
      denies private communication, requisite sleep, shelter, bedding,
      food, drink, or use of a bathroom facility;
5. [4.] Include the provision of training to other SCL providers
   concerning implementation of the behavioral support plan;
6. [5.] Include for the monitoring of an SCL recipient's progress
   which shall be accomplished through:
   a. The analysis of data concerning the frequency, intensity,
      and duration of a behavior; and
6. The reports of an SCL provider involved in implementing the
   behavioral support plan;
7. Provide for the design, implementation, and evaluation of
   systematic environmental modifications;
8. [6.] Be provided by a behavior support specialist who shall
   have:
   a. A master's degree with formal graduate course work in a
behavioral science; and
b. One (1) year of experience in behavioral programming;
9. [T] Be documented by a detailed staff note which shall include:
a. The date of the service;
b. The beginning and ending time; and
c. The signature, date of signature and title of the behavioral specialist.
10. [T] Be limited to ten (10) hours for an initial functional assessment and six (6) hours for the initial development of the behavior support plan and staff training;
(a) Case management which shall include [see];
1. Initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;
2. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings;
3. Assisting an SCL recipient and the support team to develop, update, and monitor the ISP which shall:
a. Be initially developed within thirty (30) days of the initiation of the service using person-centered guiding principles;
b. Be updated at least annually or as changes occur;
c. Be submitted on the MAP-351B and MAP-145 SCL forms; and
d. Include the addendum to the ISP and be sent to DMH/HRM within fourteen (14) days of the effective date that the change occurs with the SCL recipient;
4. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information; and
5. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;
6. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and any change to the selection of an SCL provider and the reason for the change;
7. Timely distribution of the ISP, crisis prevention plan, assessment, and other documents to chosen SCL service providers;
8. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a case management staff person;
9. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:
a. Individual-specific;
b. Annually reviewed; and
c. Updated as a change occurs;
10. Assisting an SCL recipient in planning resource use and ensuring protection of resources;
11. Services that are exclusive of the provision of a direct service to an SCL recipient;
12. Monthly face-to-face contact with an SCL recipient;
13. Monitoring the health, safety, and welfare of an SCL recipient;
14. Monitoring all of the supports provided to an SCL recipient;
15. Establishing a human rights committee which shall:
a. Include:
   (i) SCL recipient;
   (ii) Individual not affiliated with the SCL provider; and
   (iii) Individual who has knowledge and experience in rights issues;
   b. Review and approve, prior to implementation and at least annually thereafter; all ISP's with rights restrictions;
c. Review and approve prior to implementation and at least annually thereafter, in conjunction with the SCL recipient's team, behavior support plans that include highly-restrictive procedures or contain rights restrictions; and
d. Review the use of a psychotropic medication by an SCL recipient with or without an ICD Axis I diagnosis;
16. Establishing a behavior intervention committee which shall:
a. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;
b. Be separate from the human rights committee;
c. Review and approve prior to implementation and at least annually thereafter or as changes are needed, in conjunction with the SCL recipient's team, all behavior support plans; and
d. Review the use of a psychotropic medication by an SCL recipient with or without an ICD Axis I diagnosis and recommend an alternative intervention if [when] appropriate;
17. Documentation with [Documented by a] monthly summary note which shall include:
a. Documentation of monthly contact with each chosen SCL provider;
b. Documentation of monthly face-to-face contact with an SCL recipient; and
c. Progress toward outcomes identified in the ISP;
18. Provision [Provided by a case manager who shall]:
a. Have a bachelor's degree in a human service;
b. Be a licensed social worker, or licensed marriage and family therapist;
c. Be a professional counselor;
d. Be a certified psychologist; or
e. Be a licensed psychological practitioner;
f. Supervision [Sponsored by a case management supervisor who shall be a QMBP]; and
19. Documentation with [Documented by a] detailed monthly summary note which shall include:
a. The month, day, and year for the time period each note covers;
b. Progress, regression, and maintenance toward outcomes identified in the ISP;
c. The signature, date of signature, and title of the individual preparing the note;
(f) Children's day habilitation which shall be:
1. Provision of support, training, and intervention in the areas of:
a. Self-care;
b. Sensory/motor development;
c. Daily living skills;
d. Communication; and
2. Provision to enable the recipient to participate in and access community resources;
4. Provision to help remove or diminish common barriers to participation in typical roles in community life.
5. Provided at a mutually agreed upon by the recipient and provider;
6. Limited to:
a. Those individuals who are in school and up to sixteen (16) years of age;
   b. Up to eight (8) hours per day; five (5) days per week; and
c. Up to sixteen (16) hours per day in combination with community living supports; and
7. Documented by:
   a. A time and attendance record which shall include:
      (i) The date of service;
      (ii) The beginning and ending time of the service;
   b. The location of the service; and
   c. The signature, date of signature, and title of the individual providing the service; and
   d. A detailed monthly staff note which shall include:
      (i) The month, day, and year for the time period each note covers;
      (ii) Progress toward outcomes identified in the ISP;
   (iii) Progress, regression, or maintenance of outcomes identified in the ISP; and
   (iv) The signature, date of signature, and title of the individual preparing the summary staff note; and
   (v) Community habilitation which shall be:
      1. The provision of support–training–and intervention in the areas of:
         a. Self-care;
         b. Daily living skills;
         c. Communication;
         d. Behavior support,
e. Social skills; and
f. Vocational training;
2. Provided in the community or a nonresidential setting, or community setting that can:
   a. Be on a fixed location or workshop, or
   b. Occur in public venues;
3. Provided to enable the SCL recipient to:
   a. Participate in a community project as a volunteer in a typically unpaid position;
   b. Access and utilize community resources; and
   c. Utilize a variety of assistance and training to interact with the environment through expressive services which shall be based on goals and be therapeutic rather than divisional;
4. Provided to individuals who are
   a. Eighteen (18) years of age or
   b. Sixteen (16) years of age as part of a transition process from school to work
4. Documented by:
   a. A time and attendance record which shall include:
      i. The date of service;
      ii. The beginning and ending time;
   b. The signature, date of signature, and title of the individual providing the service, and
   c. A detailed monthly staff note which shall include:
      i. The time, month, day and year for each note written;
      ii. The time, month, day and year for the time period the note covers;
   d. Progress toward outcomes identified in the ISP;
5. Progress, regression, and maintenance toward outcomes identified in the ISP; and
   e. The signature, date of signature and title of the individual preparing the summary note;
7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, children's day habilitation, and supported employment;
   a. Community habilitation, supported employment, and pre-vocational services;
6. Occupational therapy which shall be:
   a. A physician-ordered evaluation of an SCL recipient's level of functioning by applying diagnostic and prognostic tests;
   b. Physician ordered services in a specified amount and duration to guide an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the highest possible level of functioning;
   c. Training of other SCL providers on improving the level of functioning;
   d. Exclusive of maintenance or the prevention of regression;
   e. Provided by an occupational therapist; and
   f. Documented by a detailed staff note which shall include:
      i. The date of service;
      ii. The beginning and ending time; and
      iii. The signature, date of signature and title of the individual providing the service;
   g. Physical therapy which shall be:
      i. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;
   h. Physician ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;
   i. Training of another SCL provider on improving the level of functioning;
   j. Exclusive of maintenance or the prevention of regression;
   k. Provided by a physical therapist; and
   l. Documented by a detailed staff note which shall include:
      i. The date of service;
      ii. The beginning and ending time; and
      iii. The signature, date of signature and title of the individual providing the service;
   m. A pre-vocational service which shall be:
      i. Designed to prepare an SCL recipient for paid or unpaid employment through activities that are not job specific, including:
         a. Supporting the SCL recipient to understand the meaning, value and demands of work;
         b. Teaching social and communication skills;
         c. Teaching habilitative goals;
         d. Teaching work performance skills, or
         e. Job seeking and maintaining skills;
   n. Provided to an SCL recipient who is not expected to be able to join the general work force within one (1) year;
   o. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub. L. 89-457 (34 C.F.R. Title 3, Part 300), proof of which shall be documented in the SCL recipient's file;
4. Provided on a one-to-one basis;
5. Documented by:
   a. A time and attendance record which shall include:
      i. The date of service;
      ii. The beginning and ending time, and
   b. A detailed monthly summary note which shall include:
      i. The time, month, day and year for the time period the note covers;
   c. The time, month, day and year for the time period the note covers, and
   d. Progress toward outcomes identified in the ISP.
Psychological services which shall:
1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment for mental illness and a psychological condition;
2. Be utilized if the needs of the SCL recipient cannot be met by behavior support or another covered service;
3. Include:
   a. The administration of psychological testing;
   b. Evaluation;
   c. Diagnosis; and
d. Treatment;
4. Be incorporated into the ISP with input from the psychological service provider for the development of program-wide support;
5. Be provided by a psychologist or a psychologist with autonomous functioning; and
6. Be documented by a detailed staff note which shall include:
   a. The date of the service;
b. The beginning and ending time of the service; and
c. The signature, date of signature and title of the individual providing the service;
(d) [43] Residential support service which shall:
1. Include twenty-four (24) hour supervision in:
   a. A staffed residence which shall not have greater than three (3) SCL recipients of publicly-funded supports in a home rented or owned by the SCL provider;
   b. A group home which shall be licensed in accordance with 902 KAR 20:078 and shall not have greater than eight (8) [these (9)] SCL recipients unless an individual residing in the group home who is not an SCL recipient receives notification of SCL funding and desires to continue living in the group home;
   c. A family care home which shall not have greater than three (3) SCL recipients of publicly-funded supports living in the home; or
d. An adult foster care home which shall not have greater than three (3) SCL recipients of publicly-funded supports aged eighteen (18) or over living in the home;
2. Utilize a modular home only if the:
   a. Wheels are removed;
   b. Home is anchored to a permanent foundation; and
c. Windows are of adequate size for an adult to use as an exit in the event of an emergency;
3. [If provided via a modular home, have 180 days from the effective date of the administrative regulation to meet the modular home requirements;]
4. [Not utilize a motor home;]
   a. Provide a sleeping room which ensures that an SCL recipient:
      a. Does not share a room with an individual of the opposite sex who is not the SCL recipient’s spouse;
      b. Under the age of eighteen (18) does not share a room with an individual that has an age variance of more than five (5) years;
      c. Does not share a room with an individual who presents a potential threat; and
   d. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the SCL recipient’s health and comfort;
5. [Provide assistance with daily living skills which shall include:
   a. Ambulation;
   b. Dressing;
   c. Grooming;
   d. Eating;
   e. Toileting;
   f. Bathing;
   g. Meal planning and preparation;
   h. Laundry;
   i. Budgeting and financial matters;
   j. Home care and cleaning;
   k. Medication management;

   a. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the individual support plan;
   b. Provide or arrange for transportation to services, activities, and medical appointments as needed;
6. Include participation in medical appointments and follow-up care as directed by the medical staff; and
7. [43] Be documented by a detailed monthly summary note which shall include:
   a. The time, month, day, and year for each note written;
b. The time, month, day, and year for the period the note covers;
c. Progression, regression and maintenance toward outcomes identified in the ISP;
d. Pertinent information regarding the life of the SCL recipient; and
e. The signature, date of signature, and title of the individual preparing the staff note;
f. Be utilized by the SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and
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6. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;
7. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and any change to the selection of an SCL provider and the reason for the change;
8. Timely distribution of the ISP, crisis prevention plan, agreement, and other documents to chosen SCL service providers;
9. Providing an SCL recipient and chosen SCL providers twenty-four (24)-hour telephone access to a support-coordination staff person;
10. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:
   a. Individual-specific;
   b. Annually reviewed; and
   c. Updated as change occurs;
11. Assisting an SCL recipient in planning resource use and assuring protection of resources;
12. Exclusive of the provision of a direct service to an SCL recipient;
13. Monthly face-to-face contact with an SCL recipient;
14. Monitoring the health, safety, and welfare of an SCL recipient;
15. Documented by a monthly summary note which shall include:
   a. Documentation of monthly contact with each chosen SCL provider;
   b. Documentation of monthly face-to-face contact with an SCL recipient; and
   c. Progress towards outcome identified in the Individual Support Plan;
15. Provided by a support coordinator/case manager who shall have a bachelor’s degree in a human service;
16. Supervised by support coordinator/case manager supervisor who shall be a QMRP;
17. Documented by a detailed monthly summary note which shall include:
   a. The time, month, and year for each note written;
   b. The time, month, and year for the time period of the note;
18. Progression, regression, and maintenance toward outcomes identified in the ISP;
19. The signature, date of signature, and title of the individual preparing the note;
20. (1) (a) Supported employment which shall be:
   1. Intensive, ongoing support for an SCL recipient to maintain paid employment in an environment in which an individual without a disability is employed;
   2. Provided in a variety of settings;
   3. Provided on a one-to-one (1 to 1) basis;
   4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient’s file;
   5. Exclusive of work performed directly for the supported employment provider;
   6. Provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee (certified job coach);
   7. Documented by:
      a. A time and attendance record with shall include:
         (i) The time of service;
         (ii) The beginning and ending time, and
         (iii) The signature, date of signature, and title of the individual providing the service; and
      b. A detailed monthly summary note which shall include:
         (i) The time, month, day and year for each note written;
         (ii) The time, month, day, and year for the time period of the note covered;
         (iii) Progression, regression, and maintenance toward outcomes identified in the ISP; and
         (iv) The signature, date of signature, and title of the individual preparing the note; and
21. (7) Limited to forty (40) hours per week alone or in combination with adult day training (community habilitation).

Section 5. Incident Reporting Process. (1) An incident shall be documented on an incident report form.
(2) There shall be three (3) classes of incidents including:
(a) A class I incident which shall:
   1. Be minor in nature and not create a serious consequence;
   2. Not require an investigation by the provider agency;
   3. Be reported to the case manager [support-coordinator] within twenty-four (24) hours;
   4. Be reported to the guardian as directed by the guardian; and
   5. Be retained on file at the provider and case management [manager] [support-coordinator] agency; and
(3) A medication error which does not require medical treatment shall be reported to the assistant director of the Division of Mental Retardation, DMHMR, or its designee, on a monthly medication error report form by the tenth of the following month (be reported to the assistant director of the Division of Mental Retardation, DMHMR, or its designee, within ten (10) calendar days of discovery if the incident involves the use of restraint or a medication error, and shall include a complete written report of the incident follow-up);
(b) A class II incident which shall:
   1. Be serious in nature;
   2. Involve the use of physical or chemical restraint;
   3. Involve a medication error resulting in a physician or emergency room visit;
   4. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery, and shall involve the case manager [support-coordinator] and
   5. [5.] Be reported by the provider agency to:
      a. The case manager [support-coordinator] within twenty-four (24) hours of discovery;
      b. The guardian within twenty-four (24) hours of discovery;
      c. The assistant director of the Division of Mental Retardation, DMHMR, or designee, within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and
   (c) A class III incident which shall:
      1. Be grave in nature;
      2. [2.] Be a medication error that occurs over multiple days or results in a delay in obtaining critical medications; or
      3. [3.] Be a medication error resulting in harm or hospitalization of the individual;
      2. [4.] Be immediately investigated by the provider agency, and
      3. [5.] Be reported by the provider agency to:
         a. The case manager [support-coordinator] within eight (8) hours of discovery;
         b. The guardian within eight (8) hours of discovery;
         c. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 205;
   d. The assistant director of the Division of Mental Retardation, DMHMR, or designee, within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow up within seven (7) calendar days of discovery. If the incident occurs after 5 p.m. EST on a weekend, or occurs on a weekend or holiday, notification to DMR shall occur on the following business day;
   (3) All medication errors shall be reported to the Assistant Director of the Division of Mental Retardation, DMHMR, or designee on a monthly medication error report form by the tenth (10th) of the following month.

Section 6. SCL Waiving List. (1) An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by the department.
(2) An individual shall be placed on the SCL waiting list based upon his region of origin in accordance with KRS 205.0317(3) and (4).
(a) A signature from a physician or a QMRF indicating medical necessity.
(b) A current and valid MR/DD diagnosis, including supporting documentation to validate the diagnosis; and
(c) Completion of the Assessments II and III.

(4) DMHMR or its designee shall validate the MAP-620 application information.

(5) Prior to April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF/MR/DD shall be September 22, 1995 or the date of admission to the ICF/MR/DD, whichever is later, and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(6) Beginning April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF/MR/DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(7) The order of placement on the SCL waiting list for an individual not residing in an ICF/MR/DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual as follows:
   (a) Emergency. The need shall be classified as emergency if an immediate service is needed as determined by:
       1. Abuse, neglect or exploitation of the individual as substantiated by DCBS;
       2. The death of the individual's primary caregiver and lack of alternative primary caregiver;
       3. The lack of appropriate placement for the individual due to:
          a. Loss of housing;
          b. Inappropriate hospitalization; or
          c. Imminent discharge from a temporary placement;
       4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status; or
       5. The age of twenty (20) years and six (6) months, for an individual in the custody of DCBS.
   (b) Urgent. The need shall be classified as urgent if a service is needed within one (1) year as determined by:
       1. Threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;
       2. The individual is residing in a temporary or inappropriate placement but his or her health and safety is assured;
       3. The diminished capacity of the primary caregiver due to physical or mental status and the lack of an alternative primary caregiver;
       4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention;
       5. Future planning. The need shall be classified as future planning if a service is needed in greater than one (1) year as determined by:
          1. The individual is currently receiving a service through another funding source that meets his or her needs;
          2. The individual is not currently receiving a service and does not currently need the service;
          3. The individual is in the custody of DCBS and is less than twenty (20) years and six (6) months of age; or
          4. The individual is less than twenty-one (21) years of age.
       (8) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.

(9) A written notification of original placement on the SCL waiting list and any changes due to reconsideration shall be mailed to an individual or his legal representative and case management provider if identified.

(10) In determining chronological status, the original date of receipt of a MAP-620 shall be maintained and shall not change when an individual is moved from one (1) category of need to another.

(11) Maintenance of the SCL waiting list shall occur as follows:
   (a) During the first year of implementation of category of need, each individual currently on the SCL waiting list shall be contacted by phone or in person for validation to determine category of need;
   (b) Validation shall be completed based upon the chronological date of placement on the SCL waiting list within each geographic region; and
   (c) The department shall, at a minimum, annually update the waiting list during the birth month of an individual. The individual or his or her legal representative and case management provider shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and his or her continued desire to pursue placement in the SCL program. If a discrepancy is noted in diagnostic information at the time of the annual update, the department may request a current diagnosis of MR/DD signed by a physician or QMRF, including documentation supporting the diagnosis. The requested data shall be received by the department within thirty (30) days from the date of the letter.

(12) Reassignment of category of need shall be completed based on the updated information and validation process.

(13) An individual or his or her legal representative may submit a written request for consideration of movement from one (1) category of need to another if there is a change in status of the individual.

(14) If an individual on the SCL waiting list in the emergency category of need is placed in an ICF/MR/DD, the category of need shall not change.

(15) The criteria for removal from the SCL waiting list shall be:
   (a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;
   (b) The individual is deceased;
   (c) Review of documentation reveals that the individual does not have a mental retardation diagnosis or a developmental disability diagnosis as defined in Section 1 of this administrative regulation;
   (d) Notification of potential SCL funding is made and the individual or his or her legal representative decline the potential funding and does not request to be maintained on the SCL waiting list; or
   (e) [Repealed] [effective April 1, 2003]

(16) Notification of potential SCL funding is made and the individual or his legal representative does not, without good cause, complete the application process with the department within sixty (60) days of the potential funding notice date.

1. The individual or legal representative shall have the burden of providing documentation of good cause, including:
   a. A signed statement by the individual or the legal representative;
   b. Copies of letters to providers; and
   c. Copies of letters from providers; and
   d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:
   a. Ninety (90) days for an individual who does not reside in a facility; or
   b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan, for an individual who does reside in a facility.

(17) If notification of potential SCL funding is made and an individual or his or her legal representative declines the potential funding but requests to be maintained on the SCL waiting list:
   (a) The individual shall be moved to the future planning category; and
   (b) The chronological date shall remain the same.

(18) If an individual is removed from the SCL waiting list, the department shall mail written notification to the individual or his or her legal representative and the SCL coordination provider.

(19) The removal of an individual from the SCL waiting list shall not prevent the submittal of a new application at a later date.

(20) An individual shall be allocated potential funding based upon:
   a. His or her region of origin in accordance with KRS 205.6317(3) and (4);
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(As Amended at ARRS, August 8, 2006)

907 KAR 1:155. Payments for supports for community living services for an individual with mental retardation or a developmental disability.

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n
NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-444, effective May 14, 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, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky’s indigent citizenry. This administrative regulation establishes the reimbursement provisions relating to home and community based waiver services provided to an individual with mental retardation or a developmental disability as an alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.
(2) "North Carolina Support Needs Assessment Profile" or "NC-SNAP" means a standardized tool used for the measurement of supportive services needed by an individual with a disability.
(3) "Overall level of eligible support" means the highest of three scores from the daily living domain, health care domain, or behavior domain, as established by the NC-SNAP.
(4) "Supports for community living" or "SCL" means community-based waiver services for an individual with mental retardation or a developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service, as provided in subsection (2) of this section, provided to a Medicaid recipient who:
(a) Meets patient status criteria for an intermediate care facility for an individual with mental retardation or a developmental disability as established in 907 KAR 1:022; and
(b) Is authorized for an SCL service by the department.
(2) In order to be covered, a service shall be described, defined, and provided in accordance with the terms and conditions specified in 907 KAR 1:145.

Section 3. SCL Reimbursement. [Specialized medical equipment and supplies shall] (1) Specialized medical equipment and supplies shall:
(a) Not be available through the Medicaid Durable Medical Equipment, Vision, Hearing, or Dental Programs pursuant to 907 KAR 1:479, 907 KAR 1:038, and 907 KAR 1:026;
(b) Be ordered by a physician;
(c) Be specified in the individual support plan as identified in 907 KAR 1:145;
(d) Be a unit of service in which one (1) unit equals one (1) item as provided in Section 4 of this administrative regulation;
(e) Be submitted on form MAP-95;
(f) Be reimbursed:
1. By a reduction of twenty (20) percent of submitted costs for approved dental services; and
2. Based on the submission of three (3) price estimates of which the lowest will determine the amount of reimbursement; and
(g) Not include furniture, a recreational item, or a leisure item.
(2) A functional analysis to determine the need for a behavior support plan shall be limited to a total of forty (40) units per recipient per provider.
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(3) A behavior support plan, if required, shall be limited to a total of twenty-four (24) units per recipient per provider.

(4) Monitoring a behavior support plan shall be limited to twelve (12) units per week.

Section 4. Fixed Upper Payment Limits. (1) The following rates shall be the fixed upper payment limits for the SCL services in conjunction with the corresponding units of service:

<table>
<thead>
<tr>
<th>Service</th>
<th>Unit of Service</th>
<th>Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult day training on-site</td>
<td>15 minutes</td>
<td>$2.50</td>
</tr>
<tr>
<td>Adult day training off-site</td>
<td>15 minutes</td>
<td>$3.00</td>
</tr>
<tr>
<td>Adult foster care</td>
<td>24 hours</td>
<td>$112.49 ($64.24)</td>
</tr>
<tr>
<td>Assessment/assessment</td>
<td>One assessment</td>
<td>$75.00</td>
</tr>
<tr>
<td>Behavior support</td>
<td>15 minutes</td>
<td>$33.25</td>
</tr>
<tr>
<td>Case management</td>
<td>1 month</td>
<td>$375.00</td>
</tr>
<tr>
<td>Children's Day habilitation [Community habilitation]</td>
<td>15 minutes</td>
<td>$2.50 ($2.61)</td>
</tr>
<tr>
<td>Community living</td>
<td>15 minutes</td>
<td>$5.64</td>
</tr>
<tr>
<td>Family home</td>
<td>24 hours</td>
<td>$112.49 ($64.24)</td>
</tr>
<tr>
<td>Group home</td>
<td>24 hours</td>
<td>$126.35 ($66.60)</td>
</tr>
<tr>
<td>Occupational therapy by an occupational therapist</td>
<td>15 minutes</td>
<td>$22.17</td>
</tr>
<tr>
<td>Occupational therapy by a certified occupational therapist</td>
<td>15 minutes</td>
<td>$13.97</td>
</tr>
<tr>
<td>Physical therapy by a physical therapist</td>
<td>15 minutes</td>
<td>$22.17</td>
</tr>
<tr>
<td>Physical therapy by a physical therapist assistant</td>
<td>15 minutes</td>
<td>$13.97</td>
</tr>
<tr>
<td>[Rehabilitative services]</td>
<td>15 minutes</td>
<td>$6.64</td>
</tr>
<tr>
<td>Psychological services</td>
<td>15 minutes</td>
<td>$38.79</td>
</tr>
<tr>
<td>Respite</td>
<td>15 minutes</td>
<td>$2.77</td>
</tr>
<tr>
<td>Specialized medical equipment and supplies</td>
<td>1 item</td>
<td>Based on submission of 3 price estimates and reimbursed as described in Section 3 of this administrative regulation.</td>
</tr>
<tr>
<td>Speech therapy</td>
<td>15 minutes</td>
<td>$22.17</td>
</tr>
<tr>
<td>Staffed residence</td>
<td>24 hours</td>
<td>$168.46</td>
</tr>
<tr>
<td>[Support coordination]</td>
<td>4 months</td>
<td>$368.31</td>
</tr>
<tr>
<td>Supported employment</td>
<td>15 minutes</td>
<td>$5.54</td>
</tr>
</tbody>
</table>

(2) (44) Adult day training on-site and off-site shall be limited to:

(a) Forty (40) hours (160 units) per week; and

(b) 255 days per calendar year with the specific days established in the individual support plan and approved by the department.

(3) (62) Children's day habilitation shall be limited to forty (40) hours (160 units) per week.

Section 5. Intensity Payment. (1) In addition to the rates specified in Section 4 of this administrative regulation, a provider may receive an intensity payment.

(2) An intensity payment for a unit of service shall be:

(a) Made if a recipient has a score equal to five (5) on the NC-SNAP;

(b) Made for no more than ten (10) percent of the total Medicaid SCL population; and

(c) For the following SCL services:

1. Staffed residence;
2. Community living;
3. Respite;
4. Family home;
5. Group home;
6. Adult foster care home;
7. Adult day training on-site;
8. Adult day training off-site;
or
9. Children's day habilitation.

(3) An intensity payment for a unit of service shall be as follows:

<table>
<thead>
<tr>
<th>Service</th>
<th>Intensity Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult day training on-site</td>
<td>$0.40</td>
</tr>
<tr>
<td>Adult day training off-site</td>
<td>$0.40</td>
</tr>
<tr>
<td>Children's day habilitation</td>
<td>$0.40</td>
</tr>
<tr>
<td>Staffed residence</td>
<td>$33.69</td>
</tr>
<tr>
<td>Community living supports</td>
<td>$0.83</td>
</tr>
<tr>
<td>Respite</td>
<td>$0.42</td>
</tr>
<tr>
<td>Family home</td>
<td>$16.87 ($9.64)</td>
</tr>
<tr>
<td>Group home</td>
<td>$25.27 ($9.97)</td>
</tr>
<tr>
<td>Adult foster care</td>
<td>$16.87 ($9.64)</td>
</tr>
<tr>
<td>[Community habilitation]</td>
<td>$0.40</td>
</tr>
</tbody>
</table>

Section 6. North Carolina Support Needs Assessment Profile (NC-SNAP). (1) A recipient of an SCL waiver service shall have an NC-SNAP administered:

(a) By the department [or its designee]; and

(b) In accordance with the NC-SNAP Instructor's Manual.

(2) A new NC-SNAP may be administered:

(a) At the department's discretion; or

(b) At the timely request of an SCL provider if a change in a recipient's circumstances results in the need for increased or decreased supportive services.

(3) A provider shall be responsible for the cost of an NC-SNAP at the time administered:

(a) In accordance with subsection (2)(b) of this section; or

(b) As a result of an appeal filed in accordance with Section 8(1) of this administrative regulation.

Section 7. Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 1:145, Section 3(10).

Section 8. Appeal Rights. (1) An appeal of an NC-SNAP score in accordance with 907 KAR 1:671 shall not be allowed if the change in score does not affect the provider’s reimbursement level.

(2) An appeal of a department decision regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(3) An appeal of a department decision regarding the eligibility of an individual shall be in accordance with 907 KAR 1:560.

(4) A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

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

(a) *MAP-95 Request for Equipment Form* Department for Medicaid Services, *September 2002 Edition*;

(b) "North Carolina Support Needs Assessment Profile (NC-SNAP), 2000 Edition", copyright Murdoch Center Foundation; and

(c) "NC-SNAP Instructor's Manual", copyright 1999, Murdoch Center Foundation.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Mon-
day through Friday, 8 a.m. to 4:30 p.m.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Deputy Secretary
J. THOMAS BADGETT, MD, Ph.D., Acting Commissioner
APPROVED BY AGENCY: July 13, 2006
FILED WITH LFC: July 14, 2006 at 11 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management
(As Amended at ARRS, August 8, 2006)

908 KAR 3:190. Drug testing procedures [policies] at a state-operated facility for persons with mental illness or mental retardation.

RELATES TO: KRS 218A.050, 218A.070, 41 U.S.C. 701 - 707
NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.010 authorizes the secretary of the Cabinet for Health and Family Services to prescribe administrative regulations for the administration of the cabinet and of the institutions under the control of the cabinet. KRS 194A.050 also empowers the secretary to promulgate administrative regulations to carry out cabinet programs. This administrative regulation establishes the procedures for the drug testing of employees and contractors of state-operated institutions for persons with mental illness or mental retardation.

Section 1. Definitions. (1) "Administrator on duty" means a facility employee charged with decision-making authority for the facility during the employee's given work shift.
(2) "Applicant" means an individual seeking employment in a test-designated position at a facility operated by the department.
(3) "Appointing authority" means the Secretary of the Cabinet for Health and Family Services or his designee.
(4) "Commissioner" means the Commissioner of the Department for Mental Health and Mental Retardation Services or the commissioner's designee.
(5) "Controlled substance" is defined in KRS 218A.010(5).
(6) "Confirmation test" means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.
(7) "Controlled substance is defined in KRS 218A.010(5).
(8) "Donor" means the individual from whom a urine specimen is collected.
(9) "Dilute specimen" means a drug test urine specimen in which the creatinine concentration is less than 20 mg/dl and the specific gravity is less than 1.003.
(10) "Drug" is defined in KRS 218A.010(11).
(11) "Employee" means a person employed at or by a facility for the care and treatment of individuals with mental illness or mental retardation operated by the department.
(12) "Employee" means an immunosassay test to eliminate negative urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.
(13) "Failed drug test" means a circumstance in which a test-designated employee, who is directed to submit to a drug test, engages in any of the following actions:
(a) Fails to submit to or complete a drug test;
(b) Interferes with a drug test procedure;
(c) Tampers with a drug test specimen; or
(d) Has a second drug test conducted pursuant to Section 13(1) of this administrative regulation reported as a dilute specimen.
(14) "[43]" Negative drug test" means the results of a drug test administered with a test-designated employee in which the drug test specimens test below the cutoff levels as specified in the "Mandatory Guidelines for Federal Workplace Drug Testing Programs".
(15) "Officer" means the Drug Testing Coordinating Officer designated by each department operated facility or the officer's designee.
(14)
(16) "On duty" means being engaged in the performance of work responsibilities for the employer.
(17) "Positive drug test" means the results of a drug test administered with a test-designated employee in which the drug test specimens test at or above the cutoff levels as specified in the "Mandatory Guidelines for Federal Workplace Drug Testing Programs".
(18) "Random selection" means a statistically valid computer generated procedure utilized to determine test-designated employees selected to submit to random drug testing.
(19) "[47]" Reasonable suspicion" means the quantity of proof or evidence, based on objective facts and factually derived inferences from those facts about the conduct of an individual that would lead a reasonable person, based upon his training and experience, to suspect that the individual has been misusing or abusing a controlled substance or a prescription or nonprescription medication in violation of this administrative regulation.
(20) "[48]" Return to duty" means the circumstances and conditions under which a test-designated employee is allowed to resume the employee's regular work duties if the employee has had a positive or failed drug test result reported or has voluntarily disclosed the abuse or misuse of a controlled substance, prescription medication, or nonprescription medication, and has met the criteria specified in Section 5(3) shall be allowed to resume their regular work duties when the employee has been found to use a positive drug test result reported or has voluntarily disclosed the abuse or misuse of a controlled substance, prescription medication, or nonprescription medication, and has met the criteria specified in Section 5(3) of this administrative regulation.
(21) "Sample" means a representative portion of a urine specimen or quality control sample used for testing.
(22) "Specimen" means the portion of urine that is collected from a donor during a drug test.
(23) "Test-designated employee" means an individual employed at or by a facility for the care and treatment of individuals with mental illness or mental retardation operated by the department and who meets any of the following conditions:
(a) Provides direct health care or treatment services to a resident of the facility;
(b) Has regular unsupervised access to residents of the facility; or
(c) Has unsupervised access to controlled substances.
(24) "Voluntary disclosure" means the willful and uncorroded admission by a test-designated employee concerning his misuse or abuse of a controlled substance or prescription or nonprescription medication or that the employee has entered into abuse substance treatment.

Section 2. Applicability. (1) The department shall implement a test-designated facility employee drug testing program in accordance with the provisions of this administrative regulation and the "Mandatory Guidelines for Federal Workplace Drug Testing Programs".
(2) This administrative regulation applies to test-designated applicants and test-designated employees at a facility for the care and treatment of individuals with mental illness or mental retardation operated by the department.

Section 3. Facility Drug Testing Program. (1) Each department operated facility shall establish and operate a test-designated employee drug testing program. This program shall be implemented in accordance with this administrative regulation.
(2) As part of this program each facility shall designate a drug testing coordinating officer [hereafter the "officer" and shall include any designees].
(3) Each officer shall,
(a) Serve as the primary point of contact for facility test-
designated employee drug testing purposes between the officer's [their] respective facility and the department and between the officer's [their] respective facility and the drug testing vendor;
(b) Coordinate all facility test-designated employee drug testing activities for the officer’s [their] respective facility;
(c) Prepare and (periodically) update approximately quarterly a master roster of all test-designated employees at the officer's [their] respective facility. This roster shall include both state employees and contract employees;
(d) Submit the initial and updated master rosters approximately quarterly to the designated contact person with the contracted vendor of drug testing services;
(e) Serve as the employee designated at each facility to receive drug testing results from the drug testing vendor;
(f) Ensure that an appropriate on-site drug testing area is prepared and maintained at the facility; and
(g) Maintain all records pertaining to the facility’s drug testing program in a secure and confidential manner. Information contained in these records shall not be disclosed unless authorized by subsection (7) of this section. [Unauthorized disclosure of information contained in these records shall be prohibited].

4. The roster prepared pursuant to subsection (3)(d) of this section, shall include the following information concerning each employee:

(a) The employee’s name;
(b) The employee’s job title; and
(c) The employee’s regularly scheduled work shift.

5. The officer shall notify, within two (2) working days of receiving drug testing results, or notice of a voluntary disclosure, report these results in writing to their facility director. The officer shall also report in writing to the commissioner of the department (hereafter include his designee) within two (2) working days of receiving the drug testing results, or notice of a voluntary disclosure, the following information concerning a facility employee who had a positive drug test result reported, failed a drug test or voluntarily disclosed his misuse or abuse of a controlled substance or prescription or nonprescription medication:

(a) The employee’s name;
(b) The employee’s job title;
(c) The results of the employee’s drug test;
(d) The type of drug that occurred;
(e) The date the employee was placed on directed sick leave status; and
(f) Whether disciplinary action will be pursued.

6. Except as provided in Section 5(3)(b) of this administrative regulation, all costs associated with implementing the facility test-designated employee drug testing program prior to July 1, 2006, shall be borne by the respective facility requesting the drug testing beginning July 1, 2006, all costs associated with conducting pre-employment drug testing of prospective test-designated state employees and random and reasonable suspicion drug testing shall be borne by the respective facility requesting the drug testing. Beginning July 1, 2006, all costs associated with conducting pre-employment drug testing of prospective test-designated contract employees shall be borne by the contract agency.

7. Except as required by KRS 61.870 - 61.884 [law] or expressly authorized or required in this section, the appointing authority or anyone with knowledge shall not release employee information that is contained in the records maintained pursuant to this administrative regulation.

8. An employee subject to testing shall be entitled, upon written request, to obtain copies of records pertaining to the employee’s drug tests. The appointing authority shall promptly provide the records requested by the employee.

9. The appointing authority may disclose information required to be maintained under this administrative regulation pertaining to an employee to that employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by the employee [or on behalf of the individual], and arising from the results of a drug test administered under the provisions [requirements] of this administrative regulation, or from the appointment to the determination that the employee engaged in prohibited conduct (including a worker’s compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

10. The appointing authority shall release information regarding an employee’s records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of this information shall be in accordance with the terms of the employee’s consent.

Section 4. Testing of Test-designated Facility Employees

1. The appointing authority shall require a test-designated employee, as a condition of prospective or continued employment, to be subject to a drug test as provided in this administrative regulation.

2. Tests authorized. The following categories of test-designated employee drug testing shall be authorized in accordance with Section 5 of this administrative regulation:

(a) Reasonable suspicion testing. [A test-designated employee shall submit to a drug test if there is reasonable suspicion that the employee has violated this administrative regulation.]

(b) Preemployment testing. [An applicant not occupying a test-designated position shall submit to and have a negative drug test result reported prior to being appointed to a test-designated position.]

(c) Follow-up testing. [The following conditions apply to test-designated employees follow-up testing:

1. An employee shall submit to an unscheduled follow-up drug test if the employee has engaged in any of the following within the previous twenty-four (24) months:

- Voluntarily disclosed his misuse or abuse of a controlled substance or prescription or nonprescription medication;
- A court ordered or completed a rehabilitation program for drug abuse; or
- Been disciplined for violating this administrative regulation.

2. The appointing authority shall not require an employee who is subject to follow-up testing to submit to more than six (6) unscheduled follow-up drug tests within a twelve (12) month period.]

(d) Random selection testing. [A test-designated employee shall submit to a drug test if the employee is selected for testing on a random basis.

(g) Random selection testing.

(a) The commissioner of the department shall designate the number of random drug tests to be conducted in a given facility in any one (1) year.

(b) The number of random drug tests conducted in a given facility shall not exceed fifteen (15) percent of the number of all test-designated employees within the facility in any one (1) year.

Section 5. Positive Drug Test Results or Failed Drug Test

A test-designated employee who has a positive drug test result reported or who failed a drug test shall be immediately removed from his work duties and the employee shall be subject to disciplinary action, up to and including dismissal, associated with conduct prohibited by state laws.
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(4) An employee who was subject to the conditions of Section 4(2) of this administrative regulation and subsection (2)(d) of this section who subsequently has a second positive drug test result or who fails a drug test shall be:
(a) Informed of the positive drug test result or the failed drug test;
(b) Informed that the facility director is placing them on directed sick leave status if a state employee;
(c) Instructed to leave the facility campus immediately. A state employee shall receive the notice of directed sick leave prior to being instructed to leave the facility campus; and
(d) Informed that disciplinary action to seek dismissal is being initiated.
(5) [Nothing-e] this administrative regulation shall not alter the contract agreement between each facility and their contract vendors [or the internal personnel policies of the contract vendor].

Section 6. Prohibited Behavior. An employee shall not engage in the following activities while on duty or on facility grounds:
(1) The unlawful manufacture, distribution, sale, dispensation, possession, or use of a controlled substance;
(2) Consuming or under the influence of a controlled substance as obtained by the employee;
(3) The use, misuse, or abuse of prescription or nonprescription medication in a quantity or manner sufficient to impair a test-designated employee's ability to perform assigned duties or in any way that places patient or fellow employee safety at risk; or
(4) Interfering with a testing procedure or tampering with a test sample.

Section 7. Voluntary Disclosure. (1) A test-designated state employee who voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication shall:
(a) Not be disciplined for self disclosure reporting provided that the self disclosure occurred prior to either of the following:
1. A determination being made that reasonable suspicion drug testing is to occur; or
2. The employee being selected for follow-up or random drug testing;
(b) Receive written notice that the employee is [they are] being placed on directed sick leave status if a state employee;
(c) Be directed to leave the facility campus immediately; and
(d) Be subject to the provisions of Sections 4(2)(c) and 5 and of this administrative regulation.
(2) A test-designated state employee who voluntarily discloses that he has entered into substance abuse treatment shall:
(a) Not be disciplined for self disclosure reporting provided that the self disclosure occurred prior to either of the following:
1. A determination being made that reasonable suspicion drug testing shall occur; or
2. The employee being selected for follow-up or random drug testing;
(b) Be informed that he shall be required to submit to follow-up drug testing; and
(c) Not provide direct care services until the follow-up drug test results are reported.
(3) A test-designated state employee may take advantage of opportunities specified in subsection (1) of this section no more often than two (2) times while employed at a facility. A state employee making a voluntary disclosure shall not be excused from a subsequent drug test or from otherwise complying in full with this administrative regulation. A state employee making a voluntary disclosure shall remain subject to drug testing requirements after making the disclosure and shall be subject to disciplinary action as a result of a subsequent positive drug test result report or a failed drug test.
(4) A test-designated employee of a contract agency who:
(a) Voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication or that he has entered into substance abuse treatment shall be informed that his employing agency shall be notified of the employee's self disclosure;
(b) Voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication or that he has entered into substance abuse treatment and dismissal does not occur shall be subject to follow-up drug testing;
(c) Voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication shall be instructed to leave the facility campus immediately and shall be informed that he shall not be allowed to return to work until he is in compliance with Section 5(3) of this administrative regulation.
(5) An employing agency, having been notified pursuant to subsection (4)(a) (2) of this section, shall make a determination as to what disciplinary action, if any, shall be initiated with its employee, as well as any other condition for continued employment with the agency.
(6) The officer shall offer to assist a test-designated employee who voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication in obtaining substance abuse treatment services.

Section 8. Facility Employee Notification. (1) New test-designated facility employees shall receive information and training concerning this administrative regulation as part of the employee's initial orientation training.
(2) Current test-designated facility employees shall receive information and training concerning this administrative regulation prior to implementation of the test-designated employee drug testing program.
(3) Information and training provided pursuant to subsections (1) and (2) of this section shall include:
(a) Information regarding the type and nature of services and supports available through the Kentucky Employee Assistance Program;
(b) How to access these services and supports; and
(c) The availability of and how to access other local or regional substance abuse treatment services.
(4) The human resources office within each facility shall maintain documentation that all employees have received information and training concerning this administrative regulation.
(5) A test-designated facility employee shall sign a document certifying:
(a) Receipt of information and training concerning this administrative regulation;
(b) An understanding of the requirements, limitations, and restrictions on facility employee conduct contained in this administrative regulation; and
(c) An understanding of the potential consequences, up to and including dismissal, for violation of this administrative regulation.

Section 9. Drug Testing Guidelines. (1) Random drug testing of test-designated employees shall occur under the following guidelines:
(a) On-site random drug testing of test-designated employees shall occur on approximately a quarterly basis;
(b) The commissioner shall determine:
1. The number and rate of test-designated employees who shall be directed to submit to random drug testing; and
2. The number of random drug tests to be conducted in a given facility in any one (1) year.
2. The number of random drug tests conducted in a given facility shall not exceed fifteen (15) percent of the number of all test-designated employees within the facility in any one (1) year. The commissioner of the department shall determine the number and rate of test-designated employees who shall be directed to submit to random drug testing.
(c) Following consultation with and approval by the officer's [their] respective facility director and the commissioner [of the department], the officer shall contact the designated contract vendor contact person to schedule and make arrangements for the next session of on-site random drug testing;
(d) The contract vendor shall provide the officer with a roster of the names of employees randomly selected to participate in the next session of on-site random drug testing at least two (2) weeks prior to the scheduled testing date. This roster shall include a sufficient number of alternate selections so as to allow for those employees originally selected to submit to random drug testing and
who, for whatever reason, did not report to work on the scheduled testing date. The officer shall not disclose to any test-designated employee selected for testing the date and time of the scheduled random drug test prior to the date and time the employee is to report for testing:

(e) The officer, following consultation with and approval by his facility director, shall make adequate arrangements to ensure the ongoing orderly operation of the facility while the random drug testing is occurring. These arrangements shall include a master schedule of the order and time when selected employees shall be tested. This information shall not be shared with any employee or supervisor prior to the test date except in accordance with paragraph (f) of this subsection;

(f) The officer shall inform only those facility employees deemed to be absolutely necessary as to date and time of the next scheduled session of on-site random drug testing. A test-designated employee scheduled for testing shall not be notified that he has been selected for testing until the specified time and date the employee is to report for testing;

(g) Upon the date of the next scheduled session of on-site random drug testing, the officer shall inform a test-designated employee selected for random drug testing that he has been selected to submit to on-site random drug testing. The notification shall be made utilizing the highest possible degree of discretion and respect for the employee;

(h) The officer shall ensure that each test-designated employee selected for random drug testing shall arrive at the facility drug testing site at his scheduled time and shall monitor throughout the donor process; and

(i) A test-designated employee selected for random drug testing shall return to his regularly assigned job duties upon successful completion of the donor process.

(2) Reasonable suspicion drug testing of test-designated employees shall occur under the following guidelines:

(a) A test-designated employee shall be subject to drug testing if there is reasonable suspicion that the employee has abused or misused a controlled substance, prescription medication, or nonprescription medication as prohibited (excluded) in this administrative regulation;

(b) Reasonable suspicion drug testing shall take place as soon as possible following the determination that reasonable suspicion exists. This testing shall take place on-site at the facility;

(c) A test-designated employee required to submit to reasonable suspicion drug testing shall provide direct care services until the drug test results have been reported;

(d) A determination that reasonable suspicion exists to require a test-designated employee to submit to drug testing shall be based on specific, immediate and clearly describable observations concerning the employee’s appearance, behavior, speech or body odor. Observations may include indications of the chronic and withdrawal effects of controlled substances;

(e) A reasonable suspicion determination shall be made only under the following conditions:

1. An initial reasonable suspicion determination is made concerning a test-designated employee by an individual in a position of supervisory authority at the facility;
2. The initial reasonable suspicion determination is verified by the administrator on duty or the officer; and
3. Prior to a facility employee making an initial reasonable suspicion determination or a reasonable suspicion determination verification, the employee shall have first received department approved training and instruction on how to make a reasonable suspicion determination.

(3) Presumptive testing:

(a) An individual applying for employment at a department-operated facility shall first submit to and successfully pass a drug test prior to gaining employment at the facility. Testing shall take place at an off-site testing site approved by the officer;

(b) An individual shall not begin employment at a facility if a positive drug test result or a failed drug test has been reported for the individual;

(c) An applicant who has a positive preemployment drug test result or who fails a preemployment drug test shall not be subsequently considered for appointment at a department operated facil-

ity for a period of at least one (1) year.

(4) Follow-up testing.

(a) A test-designated employee shall submit to unscheduled follow-up drug testing if the employee has engaged in any of the following within the previous twenty-four (24) months:

1. Voluntarily disclosed the misuse or abuse of a controlled substance or prescription or nonprescription medication;
2. Entered into or completed a rehabilitation program for drug abuse;
3. Had a positive drug test result reported or failed a drug test and dismissal did not occur;
4. Reports a criminal drug statute conviction; or
5. Been disciplined for violating this administrative regulation.

(b) A test-designated employee who is subject to follow-up drug testing shall not be required to submit to more than six (6) unscheduled follow-up drug tests within any twelve (12) month period.

(c) Follow-up drug testing shall take place at an off-site testing site as directed by the officer.

Section 10. Drugs Included. (1) If a drug test is administered prior to July 1, 2006, the department shall, at a minimum, test for:

(a) Marijuana;
(b) Cocaine;
(c) Opiates;
(d) Amphetamines; and
(e) Phencyclidine.

(2) If a drug test is administered pursuant to this administrative regulation on or after July 1, 2006, the department shall, at a minimum, test for:

(a) Marijuana;
(b) Cocaine;
(c) Opiates;
(d) Amphetamines;
(e) Phencyclidine;
(f) Morphone;
(g) MDMA (Ecstasy);
(h) Methadone;
(i) Benzodiazepines;
(j) Barbituates; and
(k) Ocycodeine.

(2)(9)(a) If conducting reasonable suspicion drug testing, the testing department may test for any drug listed in Schedule 1 or 2 as defined in KRS Chapter 219A.

(b) Before the department tests for other drugs, it shall first obtain approval from the appointing authority.

(c) If requesting approval for the testing of other drugs, the department shall first submit to the appointing authority the agency’s proposed initial test methods, testing levels, and reported performance standards.

(2)(4)(b) Such administrative regulation shall not limit a contract [an] agency which is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees.

(4) (6) Initial and confirmatory drug testing conducted pursuant to this administrative regulation shall utilize cutoff levels as specified in the federal “Mandatory Guidelines for Federal Workplace Drug Testing Programs.”

(5) (8) Drug test specimens that meet or exceed the cutoff levels as specified in subsection (5) of this section shall be reported as a positive test result.

(6) (7) Drug test specimens that test below the cutoff levels as specified in subsection (5) of this section shall be reported as a negative test result and shall constitute a passed drug test. Further testing of a negative specimen for drugs shall not be permitted, and the negative specimen shall be discarded or pooled for use in a laboratory’s internal quality control program.

Section 11. Employee Duty to Report Convictions. A test-designated employee shall report a criminal drug statute violation for which he was convicted within five (5) working days of the conviction to the facility’s human resources office. A test-designated employee who reports a criminal drug statute conviction shall be subject to follow-up drug testing.
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, August 8, 2006)

921 KAR 3:035. Certification process.


STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 273.10 [274-12]

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Food Stamp Program within the state. KRS 194A.050(1) 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. This administrative regulation establishes the certification process used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), The cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsections (3) and (4) of this section, a household shall be certified for at least six (6) months.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(a)(1); and
2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a six (6) month or twenty-four (24) month certification as specified in subsections (2) and (4) of this section.

(4) A household shall be certified for twenty-four (24) months if all members:

(a) Are either elderly or have a disability, as defined in 921 KAR 3:010; and
(b) Have no earned income.

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;
(2) Notice of denial; or
(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application;

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; or
2. Provide uninterrupted benefits, if the household is otherwise eligible; or
(b) If [2]-If a household files the application] After the 15th day but prior to the last day of the last month of the certification, the
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1. Allow the household thirty (30) days to return verification or complete a required action; and

2. If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures.

(1) A household with a self-employed member shall have its case processed as follows:

(a) Income is annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or

2. Is received on a monthly basis which represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Average annualized amount does not accurately reflect the household's actual circumstances; and

2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as follows:

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

   a. Room;

   b. Meals; and

   c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business,

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

(c) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as follows:

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included when:

1. Assigning benefit levels;

2. Comparing monthly income with income eligibility standards; and

3. Comparing household resources with resource eligibility standards.

(d) A household with a member ineligible due to failure to provide a Social Security number, or ineligible alien status, shall be processed as follows:

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as described in 7 C.F.R. 273.11(c)(3)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as specified in subsection (3)(c) of this section.

(f) A household with a non-household member shall be processed as follows:

(a) With the exception of an ineligible member, the income and resources of a non-household member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a non-household member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable, or

2. Count a pro rata share of earned income, if the non-household member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, when determining the eligibility and benefits for the household.

(d) The cabinet shall process the case as follows:

1. A resident shall have the case processed as follows:

   a. An eligible household shall include:

      1. A narcotic addict; or

      b. An alcoholic; and

      2. A child of the narcotic addict or alcoholic.

2. Certification shall be accomplished through use of the facility's authorized representative.

3. Food stamp processing standards and notice provisions shall apply to a resident recipient.

4. A treatment center shall notify the cabinet of a change in a resident's circumstances.

5. Upon departure of the center, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

6. The organization or institution shall be responsible for knowingly misrepresenting a household circumstances.

7. The following case processing procedures shall apply to residents as follows:

   a. A resident of a group living arrangement, as defined in 7 C.F.R. 271.2, who is blind or disabled, as specified in 521.1(b)(2)(i), receives and/or receives retired, survivors', and disabled individuals or SSI benefits shall have the case processed as follows:

      (a) A resident shall apply on its own behalf or through use of the facility's authorized representative.

      (b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who filed the application:

1. If a resident applies on his own behalf, the household shall report a change in household circumstance to the cabinet; and

2. If the group living arrangement acts as representative, the group living arrangement shall report a change in household circumstance.

3. Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

4. Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

5. A case of a resident in a shelter for battered women and children shall be processed as follows:

(a) The shelter shall:

1. Have Food and Nutrition Service (FNS) authorization to redeem food benefits at wholesalers; or

2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g); and

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

9. The case of an SSI recipient shall be [have the case] processed as follows:

(a) An Application may be filed at the:

1. [The] Social Security Administration (SSA) office; or

2. [The] local Department for Community Based Services (DBS) office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to
approving benefits.
(d) Certification periods shall conform to Section 2 of this administrative regulation.
(e) A household change in circumstance shall conform to Section 6 of this administrative regulation.
(10) A household with a member who is on strike shall have its eligibility determined by:
(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;
(b) Adding the higher of the prestrike income or current income to other current household income; and
(c) Allowing the appropriate earnings deduction.
(11) Sponsored aliens.
(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(a)(2), shall be:
1. Deemed income from a sponsor and sponsor's spouse which shall:
   a. Include total monthly earned and unearned income; and
   b. Be reduced by:
      (i) The twenty (20) percent earned income disregard, if appropriate; and
      (ii) The Food Stamp Program's gross income eligibility limit for a household equal in size to the sponsor's household,
   2. Subject to appropriate income exclusions as specified in 921 KAR 3:020, Section 3; and
   3. Reduced by the twenty (20) percent earned income disregard, if appropriate.
(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be prorated among each sponsored alien.
(c) A portion of income, as specified in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:
1. Becomes a naturalized citizen;
2. Is credited with forty (40) qualifying quarters of work;
3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(a)(6);
4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or
5. Dies, or the sponsor dies.
(d) Effective October 1, 2003, deeming requirements shall no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with 7 U.S.C. 2014.

Section 6. Disaster Certification. The cabinet shall distribute emergency food stamp benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area, in accordance with 42 U.S.C. 5179 and 7 C.F.R. 208.1.

Section 7. Reporting Changes. (1) If a household does not meet criteria specified in Section 2(4) of this administrative regulation, the [a-certified] household shall be required to report, [a change in household circumstances] within ten (10) days of the end of the month in which the change occurs, a change which causes:
(a) The household's gross monthly income to exceed 130% of poverty level based on household size or
(b) A household member, who does not have an exemption from work requirements, as specified in 921 KAR 3:025(8)(b), to work less than twenty (20) hours per week.
(2) If a certified household meets criteria in Section 2(4) of this administrative regulation, the household shall report a change in circumstance within ten (10) days of the date the change becomes known to the household.
(3) An applying household shall report a change related to its food stamp eligibility and benefits:
(a) At the certification interview; or
(b) Within ten (10) days of the date of notice of eligibility, if the change occurs after the interview but prior to receipt of the notice.
TOM EMBERTON, Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: June 12, 2006

VOLUME 33, NUMBER 3 - SEPTEMBER 1, 2006

FILED WITH LRC: June 13, 2006 at 4 p.m.
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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, August 8, 2005)

922 KAR 2:160. Child Care Assistance Program.
STATUTORY AUTHORITY: KRS 194A.050(1), 199 892, 199 894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs. This rule fulfills the responsibilities vested in the cabinet, and enforces the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199 892 enables the Cabinet for Health and Family Services to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 601-619 and to provide for effective regulation of child care centers. KRS 199 894 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. [E.O. 2004-726 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.] This administrative regulation enables the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Cabinet" is as defined in KRS 199 894.
(2) "Central reason" means Adair, Anderson, Boone, Bourbon, Boyle, Bullitt, Campbell, Carroll, Casey, Clark, Clinton, Cumberland, Estill, Fayette, Franklin, Gallatin, Garrard, Grant, Green, Harrison, Henry, Jefferson, Jessamine, Kenton, Lincoln, Madison, McCracken, Mercer, Nicholas, Oldham, Owen, Pendleton, Powell, Pulaski, Russell, Scott, Shelby, Spencer, Taylor, Trimble, Wayne, and Woodford counties.
(3) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision. [Authorization means eligibility for child care assistance services determined by the Division of Protection and Permanency or the Division of Family Support.]
(4) "Certificate" means a third-party payment mechanism provided the cabinet or designee and used by a family to secure child care from a licensed, certified, or registered provider of choice.
(5) "Cabinet-certified family child care home" means a "family-child care home" as defined in KRS 199 894(1), described in KRS 199 8923, and certified in accordance with 42 CFR 2.100.
(6) "Child care and development fund" or "CCDF" is defined in 45 C.F.R. 98.2 (means the principal source of federal funding to subsidized child care services and initiatives that improve the quality of child care).
(7) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families who meet the technical eligibility requirements of Section 2 of this administrative regulation with the financial resources to find and afford quality child care.
(8) "Child care certificate" is defined in 45 C.F.R. 98.2
(9) "Child protective services" is defined in 922 KAR 1:330, Section 1(3) (4).
(7) "Day care" means the provision of child care for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's education, development, and supervision.

(8) "Child with a special need" means a child who has multiple or severe problems that require ongoing specialized care.

(9) "East region" means Bath, Bell, Boyd, Breckinridge, Breathitt, Carter, Clay, Elliott, Fleming, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Lawrence, Laurel, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Owsley, Perry, Pike, Robertson, Rockcastle, Rowan, Whitley, and Wolfe counties.

(10) "Employment" means public or private, permanent or temporary work for a minimum of twenty (20) hours per week for a wage that is paid, including self-employment.

(11) (ii) "Family" means one (1) or more adults and a child or children related by blood or law, including a stepparent or other person standing in loco parentis who resides in the same residence as the child.

(12) "Family child-care home" is:
(a) Defined in KRS 199.994(16);
(b) Described in KRS 199.995; and
(c) Certified in accordance with 922 KAR 2:100.

(13) "Full day" means child care is provided for five (5) or more hours per day.

(14) (i) A "Family child-care home" is:
(a) A family child-care home certified in accordance with 922 KAR 2:100; or
(b) A family child-care home certified in accordance with 922 KAR 2:100, and
(c) Certified in accordance with 922 KAR 2:100, and
(d) Licensed child-care provider or a registered provider for more than three (3) unrelated children.

(14) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(15) "Infant" means a child who is less than twelve (12) months of age.

(16) "Nonurban" means a county without a first, second, or third class city in KRS 81010(1) through (3).

(17) (i) "Parent" is defined in 45 C.F.R. 98.2.

(18) "Part day" means child care is provided for less than five (5) hours per day.

(19) "Preschool" means a child more than thirty-six (36) months of age and not attending kindergarten or early childhood education.

(20) (i) "Preventive services" is defined in KRS 820.020(9).

(21) (i) "Provider" is defined in 45 C.F.R. 98.2.

(22) "Provider" means owner, operator, or employee, including a volunteer, who works in a licensed day care facility, licensed family child-care home, or licensed nonresidential organization, or in a registered provider or a registered provider for fewer than three (3) unrelated children.

(23) "Qualifed alien" means a child who meets the U.S. citizenship requirements of 921 KAR 2:006, Section 1(12).

(24) "Related" means a child care provider and a child under the provider's care have one (1) of the following familial or legal relationships:
(a) Parent and biological or adopted child;
(b) Step parent and step child;
(c) Grandparent and grandchild;
(d) Great grandparent and great grandchild;
(e) Sibling;
(f) Aunt or uncle; and
(g) Child custodian and child.

(25) "School-age child" means a child attending kindergarten, elementary, or secondary education.

(26) (1) "Relative child care" means a child who has a child care provider who:
(a) Is not required to be licensed or certified; and
(b) Meets the requirements of 922 KAR 2:180.

(27) "Relative" means a child care provider and a child under the provider's care have one (1) of the following familial or legal relationships:
(a) Parent and biological or adopted child;
(b) Step parent and step child;
(c) Grandparent and grandchild;
(d) Great grandparent and great grandchild;
(e) Sibling;
(f) Aunt or uncle; and
(g) Child custodian and child.

(28) (i) "Reserved provider" means a person:
(a) At least eighteen (18) years of age;
(b) Who provides a child-care service to any of the following, who resides in a separate residence:
1. Grandchild;
2. Great-grandchild;
3. Niece or nephew; or
4. Sibling; and
(c) Who is related to the child served by
1. Marriage;
2. Blood relationship; or
3. Court decree.

(29) "Self-employment" means earning one's livelihood directly from one's own trade or business for a minimum of twenty (20) hours per week and excludes employment in an individual's residence in which:
(a) The individual does not leave the residence; and
(b) Customers do not enter the residence.

(30) "Special needs child" means a child who has a condition that requires ongoing specialized care as defined by 20 U.S.C. 1401.

(31) "Teenage parent" means a parent [person] who is:
(a) Nineteen (19) years of age or younger; and
(b) Attending high school or pursuing a GED.

(32) "Toddler" means a child between the age of twelve (12) months of age and up to an age of twenty-four (24) months.

(33) "U.S. Urban" is defined as a county listed in KRS 81010(1) through (3) as having a first, second, or third class city.


Section 2. Technical Eligibility. (1) A child shall be eligible for a service if the child:
(a) Is:
1. A resident of Kentucky and
2. A U.S. citizen or qualified alien; or
(b) Is under age:
1. Thirteen (13); or
2. Nineteen (19) and is:
(a) Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a:
(i) Physician;
(ii) Licensed or certified psychologist;
(iii) Qualified mental health professional as defined in KRS 202A 011(12);
(iv) Community agency approved by the cabinet, including a school or comprehensive care center; or
(v) Cabinet employee or designee through a child protective service or preventive services agency; or
(vi) Comprehensive family services coordinator through a preventive services agency; or
(b) Under court supervision; or
(c) Identified as a priority by federal statute, regulation, or funding source; and
(c) 1. Resides with a parent who is a teenage parent; or
(f) whose income does not exceed:
(a) 150 percent of the federal poverty level at the time of initial application or
(b) 150 percent of the federal poverty level at the time of redetermination;
(d) 2. Resides with a parent who:
(a) Receives child protective services, or needs to receive child protective services based upon an assessment conducted by the cabinet's protection and permanency staff pursuant to 922 KAR 1:330 or
(b) Needs to receive child protective services, or
(c) A child who participates in the CCP as a result of a child protective services authorization shall be eligible without regard to the family's income; or
(d) The child care copy required by Section 3(1)(b) of the administrative regulation may be waived by the cabinet or its designee due to the family's protective services needs or related circumstances [on a case-by-case basis]; or
(e) A child who participates in the CCAP as a result of a child protective services authorization shall be eligible without regard to the family's income; or
(f) The child care copy required by Section 3(1)(b) of the administrative regulation may be waived by the cabinet or its designee due to the family's protective services needs or related circumstances [on a case-by-case basis]; or
(g) A child who participates in the CCAP as a result of a child protective services authorization shall be eligible without regard to the family's income; or
(h) The child care copy required by Section 3(1)(b) of the administrative regulation may be waived by the cabinet or its designee due to the family's protective services needs or related circumstances [on a case-by-case basis]; or
b. Receives child preventive services, or needs to receive child preventive services based upon an assessment conducted by the cabinet's protection and permanency staff pursuant to 922 KAR 1:330 (or needs to receive preventive services), except:

(i) A child who participates in the CCAP as a result of a preventive services authorization shall be eligible without regard to the family's income;

(ii) The child care copayment shall be assessed in accordance with Section 3(1)(b) of this administrative regulation, unless waived by the cabinet or its designee due to the family's preventive services needs or related circumstances (on a case-by-case basis); and

(iii) A child shall not be eligible for more than one (1) year per [without] authorization;

3. Resides with a parent whose family's income does not exceed 150 percent of the federal poverty level when the first-time-of-initial application is made or 165 percent of the federal poverty level when the first-time-of-redetermination is made; and

b. Is participating in the Kentucky Works Program described in 921 KAR 2:370;

d. [Is] enrolled in an educational or training program consistent with an employment goal; and:

(i) Is employed for a minimum of twenty (20) hours per week;

or

(ii) Meets the requirements of subsection (3) of this section; or

4. Is placed with a relative caretaker pursuant to the conditions of KRS 665.120(5) whose family's income does (0): [a] is a death, [b] is not a death, [c] is not a death, [d] is not a death; or

5. Is placed with a relative caretaker pursuant to the conditions of KRS 665.120(6) for Kinship Care and the caretaker's gross monthly income shall not exceed:

(a) 150 percent of the federal poverty level when the [at-the-
time-of-initial application is made]; and

(b) 165 percent of the federal poverty level when the [at-the-
time-of-redetermination].

(2) A child who resides in a two (2) parent household shall be eligible for participation in the CCAP if the family meets the requirements of subsection (1)(a), (b), and (c)(3)(f) of this section and:

(a) Both parents meet the requirements of subsections (1)(c)(2) or (3) of this section; or

(b) One (1) parent meets one (1) or more of the requirements of subsections (1)(c)(1) or (2) [2-6]-through-g), and (3) of this section and the other parent:

1. Is physically or mentally unable to provide adequate care or supervision as demonstrated by written proof from a qualified professional attesting to the parent's ability;

2. Meets the requirements of subsection (1)(c)(2)a or b of this section.

(3) A child who resides with a parent shall be eligible if the parent participates:

(a) As an unpaid student in a minimum of twenty (20) hours per week of:

1. Student teaching;

2. Internship; or

3. Practicum; or

(b) In a combination of paid employment and unpaid student capacity described in paragraph (a) of this subsection equal to twenty (20) hours per week.

(4) To the extent that state and federal funds are available, financial eligibility for participation in the CCAP may be increased beyond 150 percent of the federal poverty level for initial application and 165 percent of the federal poverty level for redetermination.

(5) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or food stamp assistance case in which the child in need of services is included;

(d) A person living in the same home as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers (unregulated provider registration) in the Child Care Assistance Program;

(f) An alternative program such as Head Start, state preschool or state kindergarten; or

(g) Another child care provider if the family operates a child care business in the home.

(6) If the family's income remains less than 150% of the federal poverty level, the family who has transitioned from K-TAP may continue participation in the program.

(7) Prior to the determination of technical eligibility, a parent of the child shall sign the DCC-90A or DCC-90B, "Application for Subsidy of Child [Day Care Assistance]."

(8) If the restrictions specified in subsection (5) of this section do not apply to the related provider, the related provider may be eligible for payment from the Child Care Assistance Program.

Section 3. Parental Rights and Responsibilities. (1) The family of a child served by the CCAP shall:

(a) Have rights pursuant to KRS 199.896(1) and (2); and

(b) Be responsible for a copayment in accordance with the family fee scale in Section 4(3)(4) of this administrative regulation, if the child care copay has not been waived under a child protective services authorization or preventive services authorization.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, that payment shall be in lieu of the parental copayment required by Section 4(3)(4) of this administrative regulation.

(3) Unless an alternative program such as Head Start, state preschool or state kindergarten is available and accessible during the time child care is needed, a parent of a child who receives or has been approved to receive CCAP benefits shall be offered:

(a) Child care service subject to the availability of state and federal funds; and

(b) Choice:

1. Pursuant to the option offered in 45 C.F.R. 98.30(1)(1), or

2. To receive a child care certificate, DCC-94A or DCC-94B [DCC-94A; Child Care Service Agreement and Certificate [DCC-76; Child Day Care Service Agreement and Certificate or Child Care Certificate]], that shall be:

a. Issued to the parent; and

b. Of value commensurate with the subsidy value of a child care service provided in subparagraph 1 of this paragraph.

(4) The DCC-94A or DCC-94B [DCC-94A; DCC-76; Child Day Care Service Agreement and Certificate or Child Care Certificate] shall:

(a) Be used for a child care service provided by a licensed, certified, or registered, or relative provider, or agency; and

(b) Not be considered a contract or grant to the child care provider, but shall be considered assistance to the parent pursuant to 45 C.F.R. 98.30(c)(6).

(5) [If an exception is authorized by the cabinet or its designee, a parent may change his provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:

(a) A natural disaster;

(b) Closure of a provider;

(c) Familial circumstances, such as relocation, illness, or death; or

(d) A risk to the health, welfare, or safety of the child or parent.

(6)(a) Unless there is an exception pursuant to KRS 214.036, a parent shall present to the cabinet or its designee a current immunization certificate showing that the child is immunized in order to
receive a child care service under the CCAP. (b) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) days while the family takes necessary action to comply with the immunization requirement.

Section 4. State and Provider Requirements. (1) The cabinet or its designee shall provide consumer information regarding:
(a) The range of provider options pursuant to 45 C.F.R. 98.30;
(b) Parental rights pursuant to KRS 199 898(2);
(c) The K-TAP exception in which K-TAP benefits may not be reduced or terminated pursuant to 922 KAR 2:370 for a single custodial parent who refuses to work if the parent demonstrates an inability to obtain child care services for a child under age six (6); and
(d) Conditions for termination of the DCC-94A or DCC-94R (DCC-94) pursuant to KRS 199.8994(6)(b).
(2) The cabinet shall assure that a provider of a child care service funded under the CCDF and other state, federal and local funds shall comply with the applicable regulatory requirements pursuant to:
(a) 922 KAR 2:000, Child care center licensure;
(b) 922 KAR 2:100, Certification of family child care homes;
(c) 922 KAR 2:110, Child care facility provider requirements;
(d) 922 KAR 2:120, Child care facility health and safety standards;
(e) 922 KAR 2.180, Requirements for registered child care providers [unregulated provider registration] in the Child Care Assistance Program.
(3) The cabinet has established the maximum child day care payment allowable for the following reasons:
(a) The following charts represent the local maximum payment rates on a per-day basis. The local maximum payment rate charts include the following categories:
- Full day
- Part day
- Urban
- Nonurban
(4) 922 KAR 2:000, Child care center licensure;
(5) 922 KAR 2:100, Certification of family child care homes;
(6) 922 KAR 2:110, Child care facility provider requirements;
(7) 922 KAR 2:120, Child care facility health and safety standards;
(8) 922 KAR 2.180, Requirements for registered child care providers [unregulated provider registration] in the Child Care Assistance Program.

KENTUCKY CHILD CARE MAXIMUM PAYMENT RATES

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(c) The following child care maximum payment rates shall be effective for Carter county the first day of the month following the adoption of this administrative regulation.

(d) The following child care maximum payment rates shall be effective for Bullitt, Gallatin, Grant, Oldham, Pendleton, Scott, and Woodford county the first day of the month following the adoption of this administrative regulation.
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**Notes:**
- The tables list the maximum payment rates for different categories (Licensed, Certified, Registered) in the East, West, and Central Regions.
- Rates are given in two columns each: Urban and Nonurban for child care facilities.
- The table represents the payment rates for specific age groups (Infant/Toddler, Prechool, School-Age) in different regions.
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Infant/Toddler | 12 | 12 | 8 | 8
Preschool | 12 | 12 | 7 | 3
School-age | 11 | 11 | 6 | 6

(4) [6] If the same amount is charged to the general public:
(a) [4] A licensed or certified provider may receive, to the extent funds are available:
   1. [a] Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:
      a. [c] National Association for the Education for Young Children;
      b. [d] National Early Childhood Program Accreditation;
      c. [e] National Association for Family Child Care;
      d. [f] National School Aged Child Care Alliance; or
      e. [g] Other accrediting body approved by the Early Childhood Development Authority or the cabinet;
   2. [b] One (1) dollar per day beyond the maximum rate for nontraditional hour care for each child receiving services between:
      a. [d] 6 a.m. to 6 p.m.; or
      b. [e] Friday, 6 p.m. through Monday, 6 a.m.; and
(b) [2] A licensed, certified, or registered provider may receive, to the extent funds are available, a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:
   1. [a] With a special need; or
   2. [b] Who is between age thirteen (13) and nineteen (19) and is:
      a. [c] Physically and mentally incapable of caring for himself; or
      b. [d] Under court supervision.
(5)(a) [4] The cabinet or its designee shall determine a copy of the family shall pay to the provider for the cost of child day care, based on the following sliding scale:

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<tr>
<th>Income Range Monthly</th>
<th>Family Size 2 With 1 Child</th>
<th>Family Size 3 With 1 Child</th>
<th>Family Size 4 With 1 Child</th>
<th>Family Size 5 or More With 1 Child</th>
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[Families that have transitioned from TANF/K-TAP may continue participation in the program if the family's income remains less than 150% of poverty.
The maximum copay for eligible families with more than 5 members is $14 with 1 child in care and $15.75 with 2 children in care.]

(b) The family fee scale shall be effective the first day of the month following the adoption of this administrative regulation as amended.
(6) (5) The cabinet or its designee shall determine the maximum daily reimbursement rate and parent copay, not to exceed rates specified in subsections (3) through (5) [and (4)] of this section.
(7) (5) The cabinet or its designee shall advise the parent of a child served by the CCAP, per the DCC-94A or DCC-94B [DCC-94], shall advise the cabinet or its designee of [DCC-78, that] a change in family size, address, or income within ten (10) days [shall be reported to the cabinet or its designee].
(8) [9] Unless a family's child care copay has been waived, [the-family participates in the Kentucky Works Program, or is a teen-age parent] the cabinet or its designee shall include the income of each adult family member in the household when calcu-
being a family's gross monthly income with the following exceptions:
(a) A child's:
   1. Wages; or
   2. Other income;
(b) Food stamps;
(c) A one (1) time lump payment;
(d) Supplemental Security Income or Social Security received in the child's name;
(e) Daily per diem received as a foster parent;
(f) A court award;
(g) A monetary gift;
(h) Military education benefits;
(i) K-TAP benefits received on behalf of the child only; and
(j) An employer only contribution listed on a pay check stub.
(2) [169] Continued eligibility under the CCAP shall be determined:
(a) Every twelve (12) months; or
(b) Upon receipt of a reported change.
[10] [169] The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:
(a) Child protective services or preventive [preventative] services authorization;
(b) A child with a special need;
(c) A teen parent;
(d) A K-TAP recipient attempting through employment to transition off assistance;
(e) A parent whose K-TAP case has been discontinued during the past twelve (12) months and who needs child care assistance in order to accept or retain employment;
(f) A low income working parent; and
(g) A parent in education or training.
(11) [(46)] If CCAP services are reduced or terminated due to the shortage of funding, the cabinet shall provide a minimum thirty (30) day notice to each family receiving services.
(12) [(44)] If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) day notice to licensed, certified, or registered[, and relative] providers.
[13] [(42)] A licensed or certified provider that serves a child who participates in the CCAP shall:
(a) Report more than five (5) absences per month to the cabinet or its designee; and
(b) Maintain and submit, upon request of the cabinet or its designee, a monthly sign-in sheet in which the arrival and departure time of each child has been recorded.
(14) [(43)] Payment under the CCAP to a registered provider shall be based on the number of days reported on the DCC-97, Provider Billing Form [DCC-77, Child Care Billing Statement(] Excluded Attendance-Verifications] that child care services are provided.
(15) Upon the effective date of this administrative regulation, a child care center that receives subsidized child care payments, in accordance with this administrative regulation, for forty (40) or more full-time or part-time children shall:
(a) Have two (2) years to meet the requirements of a STARS for KIDS NOW center as specified in 922 KAR 2:170 and
(b) Despite any fluctuation in the number of subsidized children eligible for payments receiving care in the child care center, maintain a STARS for KIDS NOW center rating as specified in 922 KAR 2:170.

Section 5. Recoupment. (1) The cabinet shall recoup a CCAP overpayment in the following cases:
(a) Fraud pursuant to 45 C.F.R. 98.600 [involving a current recipient in which overpayment equals or exceeds the cost of recovery; or
(b) Overpayment on behalf of a parent to a child care provider due to provider error [or fraud].
(2) An overpayment shall be recovered through a reduction in the amount payable to the provider.
(3) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.
(4) If a family's child care assistance benefit is reduced or terminated, the cabinet or its designee shall provide the family with a minimum of ten (10) days notice of the change in benefits.
(5) The cabinet shall recover the amount of an improper payment pursuant to KRS 45.273-241, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 6. Criteria for Suspension or Termination of Services Under the CCAP. (1) If a family does not comply with a required copay:
(a) The cabinet or its designee shall develop a payment plan with the family;
(b) The family shall not transfer to another provider until the family demonstrates compliance with the payment plan, unless approval is granted by the cabinet or its designee due to:
   (a) A natural disaster;
   (b) Closure of a provider;
   (c) Familial circumstances, such as re-location, illness, or death; or
   (d) A risk to the health, welfare, or safety of the child or parent;
   (e) CCAP benefits may be suspended during the period in which back payment is owed to the provider.
(2) The cabinet or its designee shall investigate each allegation of fraud or overpayment and establish a repayment agreement with a family for the purpose of recovering a CCAP overpayment.
(3) Benefits under the CCAP shall be:
(a) Suspended if a family defaults on up to two (2) payments under a repayment agreement, suspension to end upon compliance with the repayment agreement; or
(b) Terminated if a family:
   1. Resides out of state,
   2. No longer meets the age, income, or parental status requirements established in Section 2(1), (2) or (3) of this administrative regulation;
   3. Fails to comply with the readetermination requirement established in Section 4(1) of the administrative regulation;
   4. Fails to provide verification of income if a copay has not been waived;
   5. Defaults on three (3) payments under a repayment agreement with the cabinet; or
   6. Refuses to sign DCC-98 a [DCC-78], Repayment Agreement.
(4) If a family reapplies for CCAP benefits after termination from the program for noncompliance with a repayment agreement, as described in subsection (3)(b)5 of this section, the cabinet or its designee shall reapprove CCAP benefits upon payment of the three (3) overdue installments.
(5) If a family reapplies for CCAP benefits after termination from the program for refusal to sign a DCC-98 [DCC-78] [payment agreement], as described in subsection (3)(b)6 of this section, the cabinet or its designee shall reapprove CCAP benefits upon signing of the DCC-98 [DCC-78], [Repayment Agreement] and payment of two (2) installments.

Section 7. Criteria for Nonpayment under the CCAP. (1) Payment under the CCAP shall:
(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to:
   1. Request payment from the cabinet or its designee prior to submitting the DCC-97 [DCC-77]; and
   2. Provide explanation for a child having more than five (5) absences;
(b) Not be made to a certified provider for more than five (5) absences per child during a month;
(c) Be denied in accordance with KRS 199.8994(6);
(d) Cease permanently if a provider:
   1. Defaults on three (3) payments under a repayment agreement with the cabinet or its designee; or
   2. Refuses to sign a DCC-98 [DCC-78], [Repayment Agreement];
(e) Not be made after the date in which a family begins using a different provider; or
(f) Not be made if a family no longer meets the technical eligibility requirements under the CCAP; or

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(a) Not be made if the child care provider fails to comply with Section 4(15) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priority established in Section 4(10)(g)(6) of this administrative regulation.

Section 8. Appeals. The cabinet or its designee shall inform a family that:

(1) Appeal of a denial, reduction, suspension, or termination of benefits shall be submitted in writing to the cabinet or its designee within thirty (30) days of the date of the negative action; and

(2) If a family appeals:

(a) A reduction of benefits, child care assistance benefits shall be available at the reduced level during the appeal; or

(b) Suspension or termination of benefits, child care assistance benefits shall not be available during the appeal.

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

(a) "DCC-90A, Application for Subsidized Child Care Assistance", edition 09/06;

(b) "DCC-90B, Application for Subsidized Child Care Assistance", edition 09/06;

(c) "DCC-91A, Child Care Service Agreement and Certificate", edition 09/06; "DCC-76 Child Day Care Services Agreement and Certificate", edition 10-01*;

(d) "DCC-99A, Child Care Service Agreement and Certificate", edition 09/06; "DCC-77 Child Care Billing Statement, Enrollment/Attendance Verification", edition 10-01*;

(e) "DCC-97, Provider Billing Form", edition 09/06; and

(f) "DCC-99, DCC-78 Repayment Agreement", edition 09-06 07-03*; and

(d) "DCC-96, Application for Subsidized Child Day Care Assistance", edition 09-06 [10-01*].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON, JR., Commissioner
APPROVED BY AGENCY: July 11, 2006
FILED WITH LRC: July 11, 2006 at 4 p.m.
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.
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Public Protection
Kentucky Horse Racing Authority
(Amended After Comments)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.210-230.360
STATUTORY AUTHORITY: KRS 230.215(2), 230.260
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the authority to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260 authorizes the authority to promulgate administrative regulations that regulate conditions under which thoroughbred racing shall be conducted in Kentucky and to establish safety standards for jockeys. This administrative regulation establishes the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey, who has not ridden in a race previously, may ride in three (3) races before applying for a license as a jockey or apprentice jockey if:

(1) The person is a licensed stable employee assistant trainer, or trainer with at least one (1) year of service with a racing stable;
(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions to be permitted the probationary mounts;
(3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;
(4) The stewards determine that the person:
(a) Intends to become a licensed jockey;
(b) Possesses the physical ability to be a jockey; and
(c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race; and
(5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 1:025, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;
(2) Shall have served at least one (1) year with a racing stable;
(3) Shall have ridden in at least three (3) races; and
(4) Shall, if required by the stewards, provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. (1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, shall:
(a) Be approved by the stewards as to competency of horsemanship;
(b) Be granted an amateur jockey's license; and
(c) Have his amateur status duly noted on the daily race program.
(2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. (1) Any person sixteen (16) years of age or older, who has not been licensed previously as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:
(a) Ten (10) pounds until he has ridden five (5) winners;
(b) Seven (7) pounds until he has ridden an additional thirty-five (35) winners;
(c) If he has ridden a total of forty (40) winners prior to the end of one (1) year from the date of his first winner, he shall have an allowance of five (5) pounds until the end of that year; and
(d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year from the date of the fifth winning mount, or until the 40th winning mount.
(2) After the completion of conditions in subsection (1) of this section, a contracted apprentice may claim three (3) pounds for one (1) year if riding horses owned or trained by his original contract employer if his contract has not been transferred or sold since his first winner.
(b) The original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner.
(c) Apprentice allowance shall not be claimed for a period in excess of two (2) years from the date of the rider's fifth winner unless an extension has been granted.
(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years.
(a) These contracts shall be:
1. Approved by the stewards;
2. Filed with the authority; and
3. Binding in all respects on the parties to the contract.
(b) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate.
(4) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disability, attendance in an institution of secondary or higher education, restrictions on racing, or other valid reason, the authority, upon recommendation of the stewards and after consultation with the racing entity which approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.
(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the authority may waive collection of an additional license fee.

Section 5. Rider Contracts. (1) All contracts between an employer owner or trainer and employee rider shall be subject to the administrative regulations promulgated by the authority.
(2) All riding contracts for terms longer than thirty (30) days, and any amendments, cancellations, or transfer, shall be in writing with the signatures of the parties notarized, and shall be approved by the stewards and filed with the authority.
(3) The stewards may approve a riding contract and permit parties to participate in racing in this state if the stewards find that:
(a) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of the execution of the contract;
(b) The contract employer possesses the character, ability, facilities, and financial responsibility conducive to developing a competent race rider; and
(c) If it is a contract for an apprentice jockey, the contract provides for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from the date of execution.

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Section 6. Restrictions as to Contract Riders. A rider shall not:
(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;
(2) Ride or agree to ride any horse in a race without consent of his contract employer;
(3) Share any money earned from riding with his contract employer; and
(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. (1) Any rider not prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer.
(2) These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the authority.
(3) Any rider employed by a racing stable on a regular salaried basis shall not ride against the stable which employs him.
(4) An owner or trainer shall not employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The purpose of this section is not to establish a minimum or maximum fee, but to provide a fee if the parties have not made any other agreement to the contrary. The fee to a jockey, in the absence of special agreement, shall be as follows:
   (a) Purse $599 and under: winning mount, $33; second place mount, $33; third place mount, $33; losing mount $33.
   (b) Purse $600 to $699: winning mount $36; second place mount, $33; third place mount, $33; losing mount $33.
   (c) Purse $700 to $1,499: winning mount, ten (10) percent of win purse; second place mount $33; third place mount $33; losing mount $33.
   (d) Purse $1,500 to $1,999: winning mount, ten (10) percent of win purse; second place mount $35; third place mount $33; losing mount $33.
   (e) Purse $2,000 to $3,499: winning mount, ten (10) percent of win purse; second place mount, $45; third place mount, $40; losing mount, $38.
   (f) Purse $3,500 to $4,999: winning mount, ten (10) percent of win purse; second place mount, $55; third place mount, $45; losing mount, $40.
   (g) Purse $5,000 to $9,999: winning mount, ten (10) percent of win purse; second place mount, $65; third place mount, $50; losing mount, $45.
   (h) Purse, $10,000 to $14,999. winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $55.
   (i) Purse, $15,000 to $24,999. winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $55.
   (j) Purse, $25,000 to $49,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $65.
   (k) Purse, $50,000 to $99,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $80.
   (l) Purse, $100,000 and up: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $105.

(2) A jockey fee shall be considered earned by a rider if he is weighed out by the clerk of scales except:
   (a) If a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for the race;
   (b) If a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, proper cause; or
   (c) If a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or the authorities, after the result has been certified and the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duty scheduled riding engagements, unless excused by the stewards. A rider shall not be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards, or the clerk of scales; and upon arrival shall report to the clerk of scales his engagements. If a rider fails for any reason to arrive in the jockey room prior to one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall advise the stewards who may require a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.
(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. A rider shall not have contact or communication with any person outside the jockey room other than an owner or representative for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.
(3) The association shall be responsible for the security of the jockey room so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.
(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race which he is engaged to ride, and when weighing out, the rider shall declare overweight, if any.
(2)(a) A rider shall not pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; and
(b) A rider shall not pass the scale with more than five (5) pounds overweight.
(3) A horse shall not be disqualified because of overweight carried.
(4) Whip, blinkers, number cloth, bridle, goggles, and rider's safety helmet shall not be included in a rider's weight.

Section 13. Wagering. A rider shall not place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. (1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and -811-
catches fastened.

(2) Each jockey shall wear:
(a) The cap and jacket racing colors registered in the name of the owner of the horse he is to ride;
(b) Stock tie;
(c) White or light breeches;
(d) Top boots;
(e) Safety helmet that meets the standards of the American Society for Testing and Materials (ASTM) F1163-00;
(f) A safety vest which shall meet the standards of the American Society for Testing and Materials (ASTM) F1937-98; and
(g) A number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.

(3) A safety vest shall not weigh more than two (2) pounds and shall not be included in the jockey's weight when weighing out to race.

(4) The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

Section 15. Advertising. (1) A jockey shall not wear advertising or promotional material of any kind (whether for a nonprofit or for-profit entity) on clothing within one (1) hour of or during a race, unless:
(a) The material advertises or promotes the Jockey's Guild in the form of (i) displaying the picture of a jockey's boot or the picture of a wheeler, or (ii) The National Thoroughbred Racing Association (NTRA) Permanently Disabled Jockeys Fund logo. No other picture or logo shall be worn unless it has previously been approved by the same owner, the same association, and the stewards under the process set forth in this administrative regulation and is reflected in the Authority's official record.
(b) The material that advertises, promotes, or refers to an entity other than the Jockey's Guild, [e.g., a recognizable logo of an entity representing the jockey],
(c) The following criteria are met:
1. The material meets the advertising standards listed in subsection (2) of this section; and
2. The jockey obtains the written approval established in subsection (4) of this section.
(2) Advertising or promotional material displayed on jockey clothing shall:
(a) Not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association to the race meet in progress; and
(b) Comply with the following size restrictions:
1. A maximum of thirty-two (32) square inches on each thigh of the pants on the outer side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine,
2. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and
3. A maximum of six (6) square inches on the front center of the neck area (or a turtleneck or other undergarment).
(c) No sponsorship shall be permitted by a person or entity whose message, business reputation, or ongoing business activity may be considered as obscene or indecent to a reasonable person.
(d)(a) Approval in writing of all three (3) of the following shall be required:
1. The managing owner of the horse, or the owner's duly authorized agent;
2. The licensed racing association, which shall grant approval only (i) if it reasonably determines the material meets the standards in subsection (2)(a) of this section; and
3. The stewards, who shall grant approval only if they reasonably determine the material meets the standards in subsections (2)(b) and (c) of this section.
(d) Written approval shall be evidenced by completion and return of the "Request to Wear Advertising and Promotional Materials," the form shall be completed and submitted to the stewards not later than the time of entry of the subject race.
$812$ As a condition for approval of advertising or promotional material, either the owners, the stewards, or the licensed racing association, in their discretion, may require a personal viewing of the proposed material as it is to be displayed.
(2) This administrative regulation shall not prohibit the sponsor of a licensed racing association race or race meeting from displaying advertising or promotional material on an association [a-track] saddlificio if it does not interfere with the clear visibility of the number of the horse.
(3) Advertising content other than that approved in this administrative regulation shall not be permitted.
(4) This administrative regulation shall not infringe upon or limit the common law rights of a racing association to elect or exclude persons, licensed or unlicensed, from association grounds or to apply the association's internal rules regarding advertising.

Section 16. Viewing Films or Tapes of Races. (1) Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race.
(2) The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves at the time designated by the stewards to view the patrol films or video tapes of races.
(3) Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

Section 17. Material Incorporated by Reference. (1) The following material is incorporated by reference.
(a) "Standard Specification for Protective Headgear Used in Horse Sport and Horseback Riding, January 10, 2000;"
(b) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, November 1998;" and
(c) "Request to Wear Advertising and Promotional Material," March 2005.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) This material may also be obtained from the Kentucky Horse Racing Authority Web site at www.khra.gov.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.
CONTACT PERSON: Jim Gallagher, Executive Director, Kentucky Horse Racing Authority, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P.J. Cocksley
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for jockeys and apprentice jockeys, including experience, fees, contracts, weighing restrictions, rules regarding wagering, and proper jockey attire.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the provisions of KRS Chapter 238 and ensure professionalism and competence among jockeys within the thoroughbred industry. Section 15 of the regulation specifically concerns the wearing of advertising by jockeys. This section was promulgated in 2005 in order to implement a 2004 decision of the U.S. District Court that invalidated an earlier provision of this regulation which banned jockeys from wearing any advertising or promotional materials on their clothing during thoroughbred races. While ruling that Kentucky's total and unconditional prohibition against the wearing of advertising by jockeys violated the First Amendment to the Constitution, the court nevertheless clearly upheld the Authority's right and
responsibility to establish reasonable regulations governing this matter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(1) vests the Kentucky Horse Racing Authority with "jurisdiction and supervision over all horse race meetings in this Commonwealth and over all associations and all persons on association grounds...". Additionally, KRS 230.215(2) vests in the Authority "forcible control of horse racing in this Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth...".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes, among other things, standards for the selection and licensing of jockeys and apprentice jockeys in Kentucky. The Authority is charged with the responsibility of overseeing and protecting the health and viability of racing in this state, and that clearly includes standards relating to the conduct of jockeys. With regard to Section 15 of this regulation specifically, it is critical that the Authority establish and maintain parameters and guidelines concerning the weaning of advertising by jockeys. The jockeys have the right to use advertising and promote the reputation of the Jockeys’ Guild (since, as the judge stated in his opinion, the guild strives to improve the working conditions of jockeys and to assist disabled jockeys), but the state has a corresponding duty to safeguard the image and integrity of racing and ensure that critical business and sponsorship interests vital to the survival of racing in this state are protected. These protections apply to both commercial and non-commercial interests, to both non-profit and for-profit entities.

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

(a) How the amendment will change the existing administrative regulation: This amendment will enable the regulation to comport more fully with the Intention and thrust of the opinion of the U.S. District Court entered in 2005. In that opinion, Judge Heyburn ruled that the Jockeys’ Guild patch constituted a speech. The Judge clearly differentiated between the wearing of the patch and traditional commercial advertising which was the subject of a separate lawsuit also pending before him at that time. The judge stated, "By weaning the patch... Plaintiffs do not convey a message that is borne out of an economic motivation or used for a primarily advertising purpose. Any such impact would be purely incidental." The court emphasized that the weaning of the patch would "raise awareness of the Jockeys’ Guild and its efforts to improve working conditions of all jockeys and, more particularly, to improve the lives of disabled jockeys." The court concluded that the wearing of the Jockeys’ Guild patch was "not commercial in nature." As a result of the opinion, the Authority amended its regulation and allowed jockeys to wear "a recognized logo of an entity representing the jockey..." without compensation and in all thoroughbred races in Kentucky. That standard differed from the rule promulgated by the Authority with respect to commercial advertising. Before wearing commercial advertising, jockeys are required to receive approval from the owner, the racing association, and the stewards. A situation has now arisen, however, which necessitates this amendment to the regulation. Prior to the 2006 Kentucky Oaks and Kentucky Derby, jockeys sought to wear advertising on their breeches for an entity known as Jockeymedia.com which, on its official Web site, promotes itself as being the "new thoroughbred advertising media [that] delivers the ultimate brand awareness." It is clear that this entity is commercial in nature. Its stated purpose, according to its own Web site, is to "maximize your brand’s awareness among national and regional TV audiences... While the camera focuses tightly on the jockey, the advertiser will not ride a camera record brand visibility and media coverage." The problem, however, as it pertains to the present regulation, is that Jockeymedia.com has been recognized as an official logo of the Jockeys’ Guild and displays the official Jockeys’ Guild emblem. For that reason, Jockeymedia.com, although clearly a commercial enterprise, may promote itself, under the regulation as it is currently written, by advertising on the clothing of jockeys without the necessity of the jockey receiving approval beforehand. It was the Authority’s intent, when it promulgated the amendment to 811 KAR 1.009 in 2005, to differentiate, just as the court did, between materials that promote charitable, philanthropic, or benevolent endeavors (such as the guild’s efforts on behalf of disabled jockeys) and materials that promote traditional commercial endeavors. The opinion of the federal court, the Authority submits, was never intended to allow unconditional commercial advertising free of all constraints or reasonable regulation. By merely using the logo of the Jockeys’ Guild and claiming to be a recognized logo of it, Jockeymedia.com has been able to sidestep the Authority’s valid and reasonable regulation regarding commercial advertising. This amendment to the regulation will close this loophole. Under this amendment, the only advertising or promotional material that may be worn by jockeys, without the requisite approval, will be material that promotes the Jockey’s Guild in the form of its official logo (a picture of a jockey’s boot or the picture of a wheelchair) or the National Thoroughbred Racing Association (NTRA) Charities Permanently Disabled Jockeys Fund logo. The latter entity has been included, since it is obviously a charitable endeavor that benefits the jockeys. Other advertising or promotional material, whether designed to benefit a purportedly charitable or noncharitable entity or whether for a profit or nonprofit entity, must receive the requisite approval by the owner, the racing association, and the stewards before it can be worn by the jockey. This amendment is consistent with and will implement the opinion of the federal court which clearly sought to differentiate between the wearing of material that constitutes commercial speech and the wearing of material that seeks to promote charitable or philanthropic aims aligned with the Jockeys’ Guild. This amendment furthers the legislature’s desire to disallow any advertising or promotion material that may be considered commercial or promotional for a personal or business interest.

(c) How the amendment conforms to the content of the authorizing statutes: As explained in (2)(a) above, this amendment is necessary in order to close a loophole which presently exists in the regulations concerning the wearing of commercial advertising by jockeys. This amendment will allow the Authority to more fully and effectively implement the spirit and the letter of the federal court’s order which differentiated between advertising that constitutes commercial speech and the wearing of the Jockeys’ Guild patch which the court concluded did not constitute commercial speech. This amendment will also provide a mechanism for the stewards to disallow advertising or promotional materials which could be considered obscene or indecent.

(d) How the amendment will assist in the effective administration of the statutes: The Authority is statutorily charged with the responsibility of policing and regulating horse racing in Kentucky. This amendment will enable the Authority to carry out that responsibility while at the same time fully complying with the clear dictate of the federal court as it relates to advertising by jockeys.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects jockeys, racing associations, and owners of racehorses.

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

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: It is not anticipated that the above groups will need to take any new or significant action to comply with this amendment to the regulation. Jockeys will continue to
have the right to display the designated Jockeys' Guild logos (the boot or the wheelchair) on their clothing and will also have the right to display the NTTRA Permanently Disabled Jockeys Fund logo. The regulation clarifies that the jockeys are required to obtain approval before wearing other advertising or promotional materials other than that specifically enumerated in the regulation. In addition, once an owner, a racing association and the stewards have approved a certain advertisement and that approval is reflected in the Authority's official records, the jockey will not need to go through the process again for that particular advertisement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3)? It is not anticipated that there will be any cost in complying with this amendment to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3)? It is anticipated that compliance with this amendment will benefit all of racing, since it will protect the integrity of the industry.

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

(a) Initially: There will be no increase in cost to the Commonwealth associated with the implementation of this amendment.

(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? There will be no additional costs incurred in implementing this amendment.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply to this regulation, since it does not treat different entities unequally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Inspector General
(Amended After Comments)

902 KAR 20:074. Operation and services; outpatient health care center.

RELATES TO: KRS 194A.030(1), 216B.010, 216B.015, 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.176, 216B.177, 216B.990

Statutory Authority: KRS 194A.050(1), 216B.042, 216B.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.105 and 216B.042 require the Cabinet for Health and Family Services to license and regulate health care facilities and health care services. This administrative regulation provides licensure requirements for the operation of and services provided by outpatient health care centers.

Section 1. Definitions. (1) "Campus" means the physical area on which the licensed main administrative building, other areas and structures are located as well as that physical area located, immediately adjacent to and within 250 yds of the main administrative building.

(2) "Main provider" means a licensed acute care hospital under which an outpatient health care center functions as a subordinate and integral part, and which is under the same name, ownership, and control as the outpatient health care center.

(3) "Outpatient health care center" or "center" means a licensed health care facility that is designated in the Certificate of Need State Health Plan as a primary care center with outpatient diagnostic and surgical services, and which is certified by the Centers for Medicare and Medicaid Services under 42 C.F.R. 413.65 as a provider-based institution, with permanent facilities on a single campus that is operated under the supervision of an organized medical staff and is comprised of service components for the provision of primary care, ambulatory surgery, twenty-four (24) hour emergency care, and radiological and magnetic resonance imaging "MRI".

Section 2. Services. The center shall provide primary care services, 24-hour emergency services, diagnostic imaging including MRI, and ambulatory surgery services on a single campus.

(1) A primary care component shall include the following services, which shall be provided in the center or shall be arranged through other providers with which the center has linkage agreements in accordance with Section 7 of this administrative regulation:

(a) Basic health care services to patients of all ages during normal hours of operation;

(b) A variety of preventative, diagnostic, and therapeutic services of sufficiently broad scope to provide for the usual and expected needs of patients in all age groups;

(c) Coordinated services for all other health components in this administrative regulation; and

(d) Services established in Section 8(1) of this administrative regulation.

(2) An ambulatory surgical care component shall include:

(a) Ambulatory surgical services that, in the professional judgment of the surgeon and the facility's medical director, may be safely performed in the outpatient setting on a patient (to-patient) whose recovery under normal circumstances shall not require inpatient care, observation hold, or convalescence in excess of twenty-three (23) hours[, and which are commonly performed on an inpatient basis in hospitals, but may be safely performed in an ambulatory surgery center];

(b) Follow-up care and services as necessary for a surgical patient's recovery; and

(c) Services established in Section 8(4) of this administrative regulation.

(3) An emergency medical services component shall include:

(a) Twenty-four (24) hour emergency medical treatment by a board certified or board eligible emergency room physician seven (7) days per week;
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(b) A specific area for emergency treatment that shall be located adjacent to an exterior entrance and is immediately accessible to emergency transport vehicles;

(c) Facilities sufficient to assure prompt diagnosis, treatment, and stabilization of injuries and trauma; and

(d) Services established in Section 8(2) of this administrative regulation.

(4) A diagnostic imaging and MRI component shall include:

(a) Radiologic and magnetic resonance imaging with permanent, fixed-site equipment licensed or registered pursuant to KRS 211.842 to 211.852 and 900 KAR 6.050, but shall not include any services for which a separate certificate of need is required,

(b) Radiologic and imaging services shall be provided in accordance with protocols established by the center, which shall include a concise statement of the reason for the service; and

(c) Services established in Section 8(3) of this administrative regulation.

Section 3. Administration and Operations. (1) The licensee shall:

(a) Be legally responsible for the center and for compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the center;

(b) Appoint a full-time administrator of the center whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the hospital governing authority; and

(c) Be responsible for and assure compliance with this administrative regulation, and make immediately available for public inspection at the center all licensure and complaint inspection reports and plans of correction pertaining to the last three (3) year survey periods.

(2) The administrator shall:

(a) Be responsible for the daily operations of the center and shall delegate that responsibility in his absence;

(b) Be responsible for the establishment and implementation of written policies and procedures covering all aspects of the center’s operation and, where appropriate, shall be consistent with the policies and procedures of the main provider;

(c) Serve as liaison between the center, its medical staff, and the main provider;

(d) Hold at least quarterly, component and departmental staff meetings that shall include a discussion of administrative and patient care standards;

(e) Ensure that a sufficient number of trained staff are available to meet the needs of all persons who receive services in the center; and

(f) Appoint a licensed physician to serve as medical director who shall direct and coordinate all medical services and oversee implementation of patient care standards and policies, who may serve as the licensed physician in charge as established in Section 5(1)(g)(1) of this administrative regulation.

Section 4. Policies and Procedures. (1) Development of policies and procedures. The administrator shall assure development or adoption and implementation of the following policies and procedures:

(a) Administrative standards and policies covering all aspects of the center’s operation and specific to each component part, including at least the following:

1. A description of organizational structure, staffing, and allocation of responsibility and accountability within each component part;

2. A description of referral linkages with inpatient facilities and other providers;

3. A description of the component services provided by the center;

4. Policies and procedures for the guidance and control of personnel performance and quality assurance;

5. Policies and procedures for creation and maintenance of administrative and patient care records and reports;

6. Policies for expense and accrual-based revenue accounting system following generally-accepted accounting procedures;

7. Policies and procedures governing the use of aseptic techniques in all areas of the center;

8. Policies and procedures for sterilization of equipment and supplies;

9. Policies and procedures for disposal of patient waste and other potentially-infectious materials; and

10. Policies and procedures for granting and withdrawal of medical staff surgical privileges and privileges for the administration of anesthetics.

(b) Patient care policies and standards, which shall be developed by staff physicians and other qualified professional staff, for all medical aspects of the center including:

1. Written protocols for standing orders, rules of practice, and medical directives applying to each of the component services, which shall be signed by the administrator and staff physician;

2. Patient care policies and standards for patients held in the center’s holding-observation area;

3. Patient care policies and standards for primary care services;

4. Patient care policies and standards for emergency medical services;

5. Patient care policies and standards for ambulatory surgical services; and

6. Patient care policies and standards for diagnostic imaging and magnetic resonance imaging services;

(c) Patient rights policies which shall be developed and assure that each patient is:

1. Informed of the patient’s rights and facility responsibilities, including procedures for handling patient grievances;

2. Informed of services available at the center and any charges not covered under Medicare, Medicaid, or other third-party payer arrangements;

3. Informed of his medical condition, unless medically contraindicated and documented in the medical record, and is afforded the opportunity to participate in the planning of medical treatment, the right to refuse treatment, and informed consent;

4. Encouraged and assisted to understand and exercise patient rights and the right to make grievances and receive a response to a grievance;

5. Assured confidentiality in treatment, care, and records, and is afforded the opportunity to approve or refuse release of records to any individual not involved in his care except as required by Kentucky law or third-party payment contract; and

6. Treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment, and in the care of his personal health needs.

(2) Accessibility of policies and procedures. Written policies and procedures shall be maintained in the facility in a readily-accessible electronic format or a written manual that is available and conveniently accessible to all staff employed in the component service.

Section 5. Personnel and Qualifications. (1) Personnel. The center shall have sufficient trained personnel to meet the needs of each patient who presents for treatment at the center, which shall include:

(a) At a minimum, a core provider team composed of at least one (1) licensed physician in charge, who may also serve as the center’s medical director and the physician in charge of emergency medicine; one (1) full-time registered nurse, who shall provide services within the scope of practice; and other nursing personnel, aides, and technicians as required to meet the needs of the patients.

(b) Licensed physician in charge. There shall be a licensed physician in charge in the center twenty-four (24) hours a day, seven (7) days a week, who shall be a physician in active practice and who shall be responsible for all medical aspects of the center’s operation. The licensed physician in charge may provide direct medical services in accordance with KHS Chapter 311.

2. Other physicians. The center shall employ or have contractual or other linkage agreements with other physicians as necessary to meet the needs of the center’s patients, and who shall be qualified to practice general medicine (e.g., general practitioner, family practitioner, obstetrician/gynecologist, pediatrician, and internist), and who shall hold at least courtesy staff privileges at one
(1) or more hospitals with which the center has a formal transfer agreement.
3. Nurses. The registered nurse shall provide services within the scope of practice pursuant to KRS Chapter 314.
   (b) At a minimum, a core ambulatory surgery component provider team composed of one (1) licensed physician in charge; other licensed physicians, dentists, or podiatrists, as necessary to meet the needs of the center's patients; an anesthesiologist or nurse anesthetist; a full-time registered nurse; and other nursing personnel, aides, and technicians as required to meet the needs of the patients.
   1. Physician. The ambulatory surgery staff physician, who may also serve as the center's medical director, shall be in active practice and shall either:
      a. Have surgical privileges at the provider-based hospital or one (1) or more hospitals with which the center has a formal transfer agreement;
      b. Be a board-certified anesthesiologist in active practice and be employed full time by the center or have a contract to work full time at the center.
   2. Other physicians. Surgical procedures shall be performed by physicians who are legally authorized to perform these procedures and have been granted privileges by the center through its medical staff or governing body.
   3. Nurse. The ambulatory surgery registered nurse shall be employed full-time and shall provide services within the scope of practice pursuant to KRS Chapter 314.
   4. Other personnel. Other nursing personnel, aides, and technicians shall be employed to meet the needs of the patients. A registered nurse shall be available during the surgical procedure and when a patient is in recovery for patient care in the operating or post-anesthesia recovery room.
   (c) At a minimum, the emergency medical component shall be composed of a licensed physician, board certified in emergency medicine or board eligible, who shall serve as director of emergency medicine, at least one (1) full-time registered nurse; and other physicians and medical staff who shall be available or on duty at all times for the emergency service.
   1. Physician. An emergency room physician shall be present in the center twenty-four (24) hours a day, seven (7) days a week, shall serve as director of emergency services and may also serve as the center's medical director. The director of emergency medicine shall assure creation and implementation of policies and procedures for emergency and narcotics care provided in the emergency room;
      a. Each patient presenting for or requesting care shall be evaluated by a qualified physician or registered nurse;
      b. Qualified medical personnel shall be available to treat a patient presenting for or requesting emergency care;
      c. At least one (1) physician shall be available on-site at all times to treat a patient;
      d. Establishment and maintenance of a manual of policies and procedures for emergency and nursing care provided in the emergency room;
      e. Nursing personnel shall be assigned to or available to cover the emergency service at all times; and
   1. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.
   2. Other physicians. Physicians employed by or under contract with the center to provide emergency medical treatment shall be board certified in emergency medicine or board eligible.
   3. Other personnel. Other nursing personnel, aides, and technicians shall be available in the emergency department to meet the needs of the patients who present for treatment.
   (2) Center staffing and qualifications. In addition to the core component staff requirements, the center shall employ sufficient numbers of qualified administrative and medical personnel to provide prompt and effective patient care and services, and shall assure at least the following:
      a. A written job description for each position, which shall be reviewed and revised as necessary;
      b. An employee health program for mutual protection of employees and patients, including provisions for preemployment and periodic health examination;
      c. A tuberculosis skin test of each staff member, which shall be documented in the employee's personnel record and which shall:
         1. Be initiated on each new staff member before or during the first week of employment. The results shall be documented in the employee's personnel record within the first month of employment, unless the employee documents a prior skin test of ten (10) or more millimeters of induration, or is currently receiving or has completed nine (9) months of therapy for latent tuberculosis infection (LTBI) or a course of multiple-drug chemotherapy for tuberculosis;
         2. Include a two (2) step skin testing for a new employee regardless of age whose initial test shows less than ten (10) millimeters of induration, unless the employee can document that he has had a tuberculosis skin test within one (1) year prior to his current employment;
         3. A staff member who has never had a skin test result of ten (10) or more millimeters Induration shall be skin tested annually, on or before the anniversary of the last skin test;
         4. A staff member who has a skin test result of ten (10) or more millimeters Induration on initial employment or annual testing shall receive a chest x-ray unless:
            a. A chest x-ray within the previous two (2) months showed no evidence of tuberculosis;
            b. The individual documents the previous completion of a course of prophylactic treatment with isoniazid. The employee shall be advised of the symptoms of the disease and instructed to report to his employer and to seek medical attention promptly if symptoms persist;
         5. The following shall be reported by the center administrator to the local health department having jurisdiction immediately upon becoming known:
            a. Names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and
            b. Chest x-rays suspicious for tuberculosis;
   6. A staff member whose skin test status increases in induration to ten (10) millimeters or more millimeters Induration shall be considered to be recently infected with Mycobacterium tuberculosis. A recently-infected person who has no sign or symptom of tuberculosis disease on chest radiograph or medical history shall receive treatment for latent tuberculosis infection ("LTBI") with isoniazid for a recommended period of nine (9) months, unless medically contraindicated, as determined by a licensed physician. Medication shall be administered only upon the written order of a physician or other ordering personnel acting within their statutory scope of practice. If an individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease with a chest radiograph to exclude a diagnosis of tuberculosis. Repeat chest radiographs are not needed, unless symptoms develop that could be attributed to TB; and
   7. A staff member who documents completion of preventive treatment with isoniazid shall be exempt from further screening requirements; and
   (d) An employee file, which shall include at the following information for each employee:
      1. Name, address, Social Security number;
      2. Evidence of current professional registration, certification, or licensure;
      3. Complete record of training, experience, and in-service;
      4. Records of performance evaluation;
      5. Records of incidents and accidents in which the employee was involved; and
      6. Documentation of current tuberculosis screening.
   (3) Personnel in-service training. Center personnel shall participate in regular in-service training programs relating to their respective job duties and activities, which shall include at least the following:
      a. Job orientation for new personnel and recurring in-service training, including a requirement that each staff member shall be knowledgeable of the center's policies;
      b. Regular in-service training for all staff emphasizing professional competence, quality assurance, policy development; and the
physical, nutritional, environmental, and social components necessary for effective health care;
(c) Regular in-service training pertaining to medical documentation and maintenance of medical records;
(d) Reporting, Identifying, and preventing abuse and neglect of children and adults; and
(e) Maintaining privacy and confidentiality of patient-specific information and records.

Section 6. Medical Records. (1) Maintenance of records. The center or the main provider shall maintain a medical record at the center for each patient to include at least the following:
(a) Medical and social history, including data from other providers;
(b) Description of each medical visit or contact, including identification of the condition or reason for the visit or contact, assessment performed, medical diagnosis, services provided, medications and treatments prescribed, and disposition;
(c) Reports of all laboratory, x-ray, and other test findings;
(d) Documentation pertaining to a patient referred to the center for treatment, including the reason for the referral, to whom the patient was referred, and information obtained from the referral source;
(e) Physicians' orders, nurses' notes, surgical and medical consent forms;
(f) History and physical examination record prior to surgery;
(g) For surgical patients, the complete medical record signed by the operating surgeon, including anesthesia record, preoperative diagnosis, operative procedures and findings, postoperative diagnosis and, if required, tissue diagnosis by a pathologist on specimens surgically removed;
(h) Charts, including records of temperature, pulse, respiration, and blood pressure; and
(i) Discharge summary completed at the time of discharge which includes condition on discharge and post-treatment instructions to the patient.
(2) Confidentiality. Confidentiality of patient records shall be maintained at all times and in accordance with 42 U.S.C. 1320d-2, the Health Insurance Portability and Accountability Act of 1996, and applicable state and federal law;
(3) Transfer of records. The center shall establish systematic procedures to assist in continuity of care if the patient moves to another provider of care, and the center shall, upon proper release, transfer medical records or an abstract, if requested;
(4) Attending signature. The attending physician shall complete and sign the medical record of each patient as soon as practicable after discharge, but not to exceed ten (10) days; and
(5) Retention of records. Medical records shall be maintained by the center for a period of five (5) years following the last treatment, assessment, or visit made by the patient.

Section 7. Linkage Agreements. The center shall have linkages through written agreements.
(1) Linkage agreements. Linkage agreements shall be established with other providers of other levels of care which may be medically indicated to supplement the services available in the center and shall include:
(a) Hospitals;
(b) Emergency medical transportation services in the service area;
(c) In-patient care facilities; and
(d) Other agreements as necessary.
(2) Inpatient agreements. Linkage agreements with inpatient care facilities shall incorporate provisions for:
(a) Appropriate referral and acceptance of patients from the center;
(b) Provisions for appropriate coordination of discharge planning with center staff; and
(c) Provisions for the center to receive a copy of the discharge summary for each patient referred to the center.
(3) Transfer agreements. The written transfer agreements shall include designation of responsibility for:
(a) Transfer of Information;
(b) Provision of transportation;
(c) Sharing of services, equipment, and personnel;
(d) Provision of total care or portions thereof in relation to facility and agency capability; and
(e) Patient record confidentiality pursuant to all applicable federal and state laws.

Section 8. Provision of Services. The center shall provide the following component services on its campus:
(1) Primary care component. The center shall provide at least the following services during scheduled hours of operation that reasonably accommodate various segments of the population:
(a) Medical diagnostic and treatment services of sufficiently broad scope to accommodate the basic health needs of all age groups;
(b) Preventive health services of sufficiently broad scope to provide for the usual and expected health needs of persons in all age groups;
(c) Educational offerings in the appropriate use of health services, preventive health services, and health maintenance;
(d) Chronic illness management;
(e) Laboratory, x-ray, and treatment services shall be provided directly or arranged through other providers; and
(f) Supplemental services may also be provided for pharmacy, dentistry, optometry, nutrition, and counseling.
(2) Emergency services component. The center shall have written policies for operation of the emergency component and shall assure the following:
(a) A patient presenting for or requesting emergency care shall be evaluated and triaged by a registered nurse or emergency department physician in accordance with the center's formal operating policies and procedures;
(b) The physician, in conjunction with the administrator and other medical staff, shall establish and maintain policies and procedures for emergency and nursing care, which shall assure that:
1. Emergency services shall be provided at all times under the direction of a licensed physician;
2. Sufficient medical staff shall be available and on site at all times to perform emergency medical care in accordance with accepted standards of practice; and
3. Current medical staff schedules and telephone numbers shall be posted in the emergency treatment area;
(c) Sufficient nursing and medical personnel shall be assigned to or designated to cover the provision of emergency services at all times;
(d) Appropriate facilities shall be provided to assure prompt diagnosis and emergency treatment for patients requiring emergency care on arrival;
(e) Adequate diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services;
(f) Adequate medical records shall be kept for each patient seen in the emergency department, which shall include at least:
1. A log listing the patient visits to the emergency department in chronological order, including:
   a. Patient identification;
   b. Means of arrival;
   c. Person transporting patient;
   d. Time of arrival;
   e. History of present complaint and physical findings;
   f. Laboratory and x-ray reports, if applicable;
   g. Diagnosis;
   h. Treatment ordered and details of treatment provided;
   i. Patient disposition; and
   j. Record of referrals.
2. Instructions to the patient or family for those not admitted to the center; and
3. Signatures of attending medical staff member, and nurse if applicable.
(3) Diagnostic Imaging and MRI services. The center shall have written policies for the operation of the component and shall assure the following:
(a) The center shall have diagnostic radiology facilities currently licensed or registered pursuant to KRS 211.842 to 211.852, the Kentucky Radiation Control Act of 1978;
(b) The center shall employ or contract with a radiologist on at
least a consulting basis to;
1. Function as the director of the department; and
2. Interpret films requiring specialized knowledge for accurate
reading;
(c) The center shall employ and have on duty sufficient per-
tsonnel to supervise and conduct services, including one (1) cer-
tified radiation operator who shall be on duty or on call at all times;
(d) Written policies and procedures governing radiologic ser-
ices and administrative routines that support sound radiologic
practices;
(e) Signed reports shall be filed in the patient's record, and
duplicate copies kept in the department;
(f) Radiologic services shall be performed only upon written
order of qualified personnel in accordance with their scope of prac-
tice and the center's protocols and bylaws, and the order shall
contain a concise statement of the reason for the service or exami-
nation;
(g) Reports of interpretations shall be written or dictated and
signed by the radiologist;
(h) Only a certified radiation operator, under the direction of
medical staff, if necessary, shall use any x-ray apparatus or mate-
rial or services include application, administration, and removal of ra-
dioactive elements, deintegrant products, and radioactive isotopes.
A certified radiation operator under the direction of a physician may
administer medications allowed within his professional scope of prac-
tice and the context of radiological services and procedures
being performed; and
(i) The radiology department shall be free of hazards for pa-
tients and personnel. Proper safety precautions shall be main-
tained against fire and explosion hazards, electrical hazards, and
radiation hazards.
(4) Ambulatory surgical component services. The center shall
have written policies for the operation of the component and shall
assure the following:
(a) The patient or the patient's legal representative shall sign a
written informed consent prior to all surgical operations;
(b) A medical history and physical evaluation shall be per-
formed and entered into the medical record no more than thirty
(30) days prior to surgery on all patients;
(c) Pertinent preoperative diagnostic studies and laboratory
tests shall be performed and made a part of the medical record
prior to surgery. The preoperative diagnosis shall be recorded in
the medical record;
(d) Patients shall be examined by a physician immediately prior
to surgery to evaluate the risk of anesthesia and of the procedure
to be performed taking into account site of service, the invasive
nature of the procedure, and the need for extended postopera-
tive recovery time or monitoring;
(e) The center shall employ a registered nurse who shall serve
as operating room supervisor for each surgical operation;
(f) A registered nurse shall be available to circulate in the oper-
ating room at all times;
(g) A list of physicians with surgical privileges at the center and
the privileges assigned to each by the medical staff shall be on file;
(h) The operating room shall have an up-to-date operating
room registry;
(i) The operating room shall have medically-appropriate sup-
plies and equipment available at all times to meet the needs of the
patients, including the following:
1. Oxygen;
2. Mechanical ventilator assistance equipment including air-
ways, manual breathing bag, and ventilator;
3. Cardiac defibrillator;
4. Cardiac monitoring equipment;
5. Tracheostomy set;
6. Laryngoscopes;
7. Endotracheal tubes;
8. Suction equipment; and
9. Emergency medical equipment and supplies specified by the
medical staff;
(j) The operating room shall have on hand, or make arrange-
ments for obtaining, an adequate supply of blood in a timely man-
ner to meet the needs of each patient,
c. A physician or registered nurse shall be on duty at the center, if a patient is held in the center's accommodations beyond regularly scheduled hours.

(5) Physical and sanitary environment.
(a) The condition of the physical plant and the overall environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.
(b) There shall be an infection control committee charged with the responsibility of investigating, controlling, and preventing infections. This committee shall develop written infection control policies that are consistent with Centers for Disease Control guidelines and include:
   1. Prevention of disease transmission to and from patients, visitors, and employees, including:
      a. Universal blood and body fluid precautions;
      b. Precautions against airborne transmittal of infections; and
      c. Work restrictions for employees with infectious diseases;
   2. Use of environmental cultures; culture testing results shall be recorded and reported to the Infection Control Committee; and
   3. Cleaning, disinfection, and sterilization methods used for equipment and the environment.
(c) The center shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections.
(d) The center's buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from accumulation of dirt, rubbish, and fouls, stale, or musty odors.
   (e) Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers, and kept separate from other cleaning materials.
   (f) The facility shall be kept free from insects and rodents, and their nesting places, and entrances shall be eliminated.
   (g) Garbage and trash:
      1. Shall be stored in areas separate from those used for preparation and storage of food;
      2. Shall be removed from the premises regularly; and
      3. Containers shall be cleaned on a regular basis.
   (h) Sharp wastes:
      1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.
      2. A needle or other contaminated sharp shall not be purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(3)(d)(7).vi).
      3. A sharp waste container shall be incinerated or shall be rendered nonhazardous.
   (i) Non-disposable sharps, such as large-bore needles or scalps, shall be placed in a puncture-resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20-009, Section 22.
   (j) Disposable waste:
      1. Disposable waste shall be placed in a suitable bag or closed container so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.
      2. The center shall establish specific written policies regarding handling and disposal of waste material.
      3. The following wastes shall receive special handling:
         a. Microbiology laboratory waste including a viral or bacterial culture, contaminated swab, or a specimen container or test tube used for microbiologic purposes shall be incinerated, autoclaved, or otherwise rendered nonhazardous; and
         b. Pathological waste including a tissue specimen from a surgical or necropsy procedure shall be incinerated.
   (k) Utilization review and medical audit. In order to determine the appropriateness of the services delivered, the center shall establish procedures for the medical audit and utilization review of services provided in the center. The center may use professional capacities and assistance obtainable from other agencies and sources. There shall be a written plan for utilization review developed by the center including frequency of review and composition of the body conducting the review.
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The amendment should not require the center to expend any additional funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The center will have better guidance as to the cabinet's expectation related to pre and postsurgical activities.

(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 creates a new licensure category and does not affect any existing individuals or entities. The regulation will benefit all Kentuckians, as it authorizes a new classification of health care facility that combines ambulatory surgery, emergency medicine, diagnostic x-ray, and primary care.

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

(a) Initially: There will be no additional costs associated with initial implementation, as the Office of Inspector General will utilize existing staff and resources to train surveyors and implement the survey protocols.

(b) On a continuing basis: There will be additional costs if other entities become licensed under this administrative regulation, and there will be no need to establish hiring additional nurse consultant/inspectors.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing 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 will not require any additional funding to implement; however, the cabinet will amend 902 KAR 20:006 to adopt a standard licensure fee for processing a health care facility license application.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all persons who apply for and obtain a license to operate an outpatient health care center.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The OIG will oversee implementation of the outpatient health care center regulation, which may require additional personnel and information for training purposes, and will assure standards are met through administrative surveys and inspections.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A, 050(1), 216B, 042.

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

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

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

(c) How much will it cost to administer this program for the first year? This regulation will not cost any additional money to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? This regulation will not cost any additional money to administer during subsequent years.

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

Revenues (+/-): Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(Amended After Comments)


RELATES TO: KRS 194A 050, 216B 040, 42 C.F.R. 483.75(q), 483.16C, 486.301
STATUTORY AUTHORITY: KRS 216B.042(1), 216B 075, 42 C.F.R. 483.35(h)

NECESSITY, FUNCTION AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to establish licensure standards to ensure safe, adequate, and efficient health care facilities. 42 C.F.R. 483.35(h) authorizes the state agency to develop an approved training and practical skills program that establishes standards for paid feeding assistants and mandates supervision by a registered nurse or licensed practical nurse. A properly-trained paid feeding assistant is a single task worker whose assistance may improve the quality of care and quality of life for a resident who needs assistance during meals. This administrative regulation establishes certification requirements for the employment of paid feeding assistants in licensed nursing facilities and skilled nursing facilities to assist residents who only need encouragement or minimal assistance during mealtimes.

Section 1. Definitions. (1) "Complicated feeding problem* means a condition that requires supervision and assistance by a licensed nurse or certified nurse aide and includes:

(a) Difficulty with swallowing;

(b) Recurrent lung aspiration;

(c) Assistance through tube or parenteral/IV feedings; or

(d) Any other condition requiring the assistance of a licensed nurse or a certified nurse aide.

(2) "Licensed practical nurse* is defined by KRS 314.011(9).

(3) "Nursing facility* means a facility that is licensed under 902 KAR 20:300.

(4) "Paid feeding assistant* means a person who has completed the training and received a satisfactory score on the examination required by this administrative regulation and is employed or contracted by a nursing facility or skilled nursing facility to provide feeding assistance to a resident who does not have a complicated feeding problem.

(5) "Registered nurse* is defined by KRS 314.011(15).

(6) "Skilled nursing facility* means a facility that is licensed under 902 KAR 20 026.

Section 2. Use of a Paid Feeding Assistant. (1) A licensed nursing facility or skilled nursing facility may employ a paid feeding assistant on a full- or part-time basis to assist with feeding a resident who shall:

(a) Not have a complicated feeding problem; and

(b) Be approved to receive the assistance based on the charge nurse's assessment and the most recent resident assessment and plan of care.

(2) A paid feeding assistant shall:

(a) Have successfully completed the training established in Section 3 of this administrative regulation;

(b) Have received orientation from the facility employing the paid feeding assistant that covers the following facility-specific areas:

1. Confidentiality of resident care and records;
2. Monitoring resident nutrition intake and output;
3. Emergency procedures;
4. Specific needs of the resident who will be assisted;
5. Use of the facility's emergency call system; and

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6. Laws pertaining to resident abuse, neglect, and exploitation of a resident's property.
   (c) Work under the supervision of a registered nurse or licensed practical nurse, and
   (d) Not be employed if employment is prohibited by KRS 216.332, 216.936, or 216.789.
   (3) In a medical emergency involving a resident who is being assisted by a paid feeding assistant, the paid feeding assistant shall immediately utilize the resident call system to summon the assistance of a supervisory nurse.
   (4) Before a facility employs a paid feeding assistant who received training from another individual or entity, the facility shall:
      (a) Contact the individual or entity that provided the training and document verification that the feeding assistant successfully completed the training required by Section 3 of this administrative regulation;
      (b) Require the feeding assistant to retest and successfully pass the written and skills competency test; and
      (c) Issue the feeding assistant a new certificate of training.
   (5) The facility shall maintain a current list of residents who are approved to receive feeding assistance from a paid feeding assistant.
   (6) A feeding assistant who is seeking employment and who has not been employed during the prior two (2) years as a paid feeding assistant shall be required to repeat and successfully complete the training and pass the examination before assisting a resident with feeding.
   (7) A facility shall provide regular in-service training for paid feeding assistants concerning:
      (a) Amendments to the paid feeding assistant regulation; and
      (b) Changes in pertinent facility policies and procedures.

Section 3: Training Program. (1) A paid feeding assistant shall receive a minimum of eight (8) hours training in the current version of the curriculum published by the Cabinet for Health and Family Services, Office of Inspector General, entitled "Kentucky Paid Feeding Assistant Manual".
   (2) Review of all curriculum material, a score of seventy-five (75) percent or greater on the written examination, and a score of 100% on the skills competency test established in the curriculum shall be required to successfully complete the paid feeding assistant training.
   (3) The training shall include information on:
      (a) Feeding techniques;
      (b) Assistance with feeding and hydration;
      (c) Communication and interpersonal skills;
      (d) Appropriate responses to resident behavior;
      (e) Safety and emergency procedures, including the Heimlich maneuver;
      (f) Infection control;
      (g) Resident rights; and
      (h) Recognition of changes in the condition of a resident which are inconsistent with the resident's normal behavior and the importance of reporting changes to a supervisory nurse.
   (4) The training shall be conducted by:
      (a) A registered nurse; or
      (b) A licensed practical nurse working under the supervision of a registered nurse.
   (5) Before conducting paid feeding assistant training, the nurse shall:
      (a) Read the "Kentucky Paid Feeding Assistant Manual";
      (b) Complete the instructor assessment in Section 15 of the "Kentucky Paid Feeding Assistant Manual"; and
      (c) Complete the instructor attestation form in Section 15 of the "Kentucky Paid Feeding Assistant Manual".
   (6) A person who has successfully completed training and passed the examination shall be issued a certificate of training as established in Section 15 of the "Kentucky Paid Feeding Assistant Manual".
   (7) A facility shall maintain a record of training and certification for all persons employed by the facility as paid feeding assistants.
      (a) The documentation contained in the record shall include:
         1. Name and social security number of the person trained,
         2. Name of the person who conducted the training;
         3. Test scores of the written and skills competency tests;
         4. Date of training;
         5. Duration of training;
         6. Location of training; and
         7. Documentation of the successful completion of the training course for paid feeding assistants.
   (b) A complete and accurate copy of the training and certification records pertaining to each paid feeding assistant employed by the facility shall be maintained on site and be available for inspection by representatives from the Office of Inspector General, and shall be maintained for at least three (3) years following the last day of the paid feeding assistant's employment. The current and accurate copy of the record shall be submitted to the Office of Inspector General within five (5) working days from the end date of each quarter (December, March, June, September). In care of the Division of Health Care Facilities and Services, 275 East Main Street, 5E-A, Frankfort, Kentucky 40624.
   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ROBERT J. BENVENUTI, III, Esq., Inspector General
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 14, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steven D. Davis, Esq.
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the requirements for testing and approving paid feeding assistants to provide services in nursing and skilled nursing facilities.
   (b) The necessity of this administrative regulation: Federal law authorizes the state agency to establish a paid feeding assistant certification program.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is consistent with 42 C.F.R. 488.35(h), which authorizes the establishment of the paid feeding assistant program.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation provides the necessary training curriculum and examination material necessary to certify an individual to serve as a paid feeding assistant.
   (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: The amendment eliminates quarterly record submissions and replaces it with the requirement to maintain records on site and mandates 3-year retention following the last day of the paid feeding assistant's employment.
      (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 statute: 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 creates a new class of employees who may assist with feeding residents in nursing and skilled nursing facilities. All persons who are certified under this regulation to provide nonmedical assistance with feeding will be
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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: This regulation authorizes the new class of employee and establishes criteria for certification.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs associated with implementation as the program materials have already been developed.
(b) On a continuing basis: No continuing costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: This administrative regulation will not increase any fees or require any additional funding to implement.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will not directly or indirectly increase any fees.
(9) TIERING: Is being applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all persons who seek certification as paid feeding assistants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Inspector General will be affected by this administrative regulation. The OIG will oversee implementation of the Paid Feeding Assistant program, will provide appropriate materials and information for training purposes, and will assure standards are met through administrative surveys and inspections.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 2168.042(1), 2168.075, 42 C.F.R. 483.35(h).
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue for state or local government.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue for state or local government in subsequent years.
(c) How much will it cost to administer this program for the first year? This regulation will not cost any additional money to administer during the first year.
(d) How much will it cost to administer this program for subsequent years? This regulation will not cost any additional money to administer during subsequent years.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:
EDUCATION PROFESSIONAL STANDARDS BOARD

(Amendment)

16 KAR 2:010. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028(1), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (f), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(b) requires the board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 16 KAR 5:010 for a specific certification or which has been approved for certification by the state education agency of another state.

(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6:010.

(3) "Base certificate" means a stand-alone license to teach which encompasses authorization to teach introductory and interdisciplinary courses in related fields.

(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.

(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments and experience as outlined in Section 5 of this administrative regulation.

(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(7) "Experienced teacher standards" means the standards established in 16 KAR 1.010 that identify what an effective experienced teacher shall know and do.

(8) "New teacher standards" means the standards established in 16 KAR 1:010 that identify what a new teacher shall know and be able to do.

(9) "Professional teaching certificate" means the document issued to:

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

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area which can be taught under this limited certificate.

(12) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed:

(a) At least a bachelor's degree with:

A. A cumulative grade point average of 2.50 on a 4.0 scale; or

B. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework.

2. As required by Section 4(2)(g)(6) and (4)(e) of this administrative regulation, a master's degree with:

(a) A cumulative grade point average of 2.50 on a 4.0 scale; or

(b) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(c) An approved program of preparation; and

(d) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the Internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with:

(a) The experienced teacher standards established in 16 KAR 1:010; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation.

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program established in 16 KAR 6:000 by September 1 of the year of expiration of the certificate; or

(b) Completion of the professional development plan and a partial portfolio for the continuing education option established in 16 KAR 6:030.

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the professional development plan and a full portfolio for the continuing education option established in 16 KAR 8:030.

(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:

(a) The new teacher standards established in 16 KAR 1:010; and

(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant professional specialty program associations and

(c) The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.

(2) A base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Interdisciplinary early childhood education, birth to primary, established in 16 KAR 2:040; or

(b) Elementary school, primary through grade five (5) to include preparation in the academic disciplines taught in the elementary school.

1. The elementary certificate shall be valid for teaching grade six (6) if grade six (6) is taught in a self-contained classroom or in a school organization in which grade six (6) is housed with grade five (5) in the same building.

2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c)1. Middle school option 1: grades five (5) through nine (9) with the equivalent of one (1) major to be selected from:

a. English and communications;
b. Mathematics;
c. Science; or
d. Social studies;

2. Middle school option 2: grades five (5) through nine (9) with
two (2) middle school teaching fields to be selected from:
   a. English and communications;
   b. Mathematics;
   c. Science; or
   d. Social studies;
3. A candidate who chooses to simultaneously prepare for
   teaching in the middle school and for an additional base or re-
   stricted base certificate issued under this subsection or subsection
   (5) of this section, including certification for teaching exceptional
   children, shall be required to complete one (1) middle school
   teaching field;
   (d) Secondary school: grades eight (8) through twelve (12) with
   one (1) or more of the following specializations:
      1. English;
      2. Mathematics;
      3. Social studies;
      4. Biology;
      5. Chemistry;
      6. Physics; or
      7. Earth science;
   (e) Grades five (5) through twelve (12) with one (1) or more of
   the following specializations:
      1. Agriculture;
      2. Business and marketing education;
      3. Family and consumer science;
      4. Industrial education; or
      5. Technology education;
   (f) All grade levels with one (1) or more of the following spe-
   cialties:
      1. Art;
      2. A foreign language;
      3. Health;
      4. Physical education;
      5. Integrated music;
      6. Vocal music;
      7. Instrumental music; or
      8. School media librarian;
   (g) Grades primary through twelve (12) for teaching excep-
   tional children and for collaborating with teachers to design and
   deliver programs for preprimary children, for one (1) or more of
   the following disabilities:
      1. Learning and behavior disorders;
      2. Moderate and severe disabilities;
      3. Hearing impaired;
      4. Hearing impaired with sign proficiency;
      5. Visually impaired;
      6. Communication disorders, valid at all grade levels for the
   instruction of exceptional children and youth with communication
   disorders, which shall require a master's degree in communication
   or speech language pathology, in accordance with 16 KAR 2.050,
   Section 2; or
7. Communication disorders - SLPA only, valid at all grade
   levels for the instruction of exceptional children and youth with
   communication disorders, which shall require a baccalaureate
   degree in communication or speech language pathology, in accor-
   dance with 16 KAR 2.050, Section 3.
3. A restricted base certificate shall be issued specifying one
   (1) or more of the following grade level and specialization author-
   izations:
   (a) Psychology, grades 8-12;
   (b) Sociology, grades eight (8) through twelve (12);
   (c) Journalism, grades eight (8) through twelve (12);
   (d) Speech/media communications, grades eight (8) through
      twelve (12);
   (e) Theater, primary through grade twelve (12);
   (f) Dance, primary through grade twelve (12);
   (g) Computer information systems, primary through grade
      twelve (12); or
   (h) English as a second language, primary through grade
      twelve (12).
4. An endorsement to certificates identified in subsection (2)
   or (3) of this section shall be issued specifying one (1) or more of
   the following grade level and specialization authorizations:
   (a) Computer science, grades eight (8) through twelve (12);
   (b) English as second language, primary through grade twelve
      (12);
   (c) Gifted education, primary through grade twelve (12);
   (d) Driver education, grades eight (8) through twelve (12);
   (e) Reading and writing which shall require a master's degree
      in reading, primary through grade twelve (12);
   (f) Instructional computer technology, primary through grade
      twelve (12);
   (g) Other instructional services - school safety, primary through
      grade twelve (12);
   (h) Other instructional services - environmental education,
      primary through grade twelve (12);
   (i) Other instructional services - school nutrition, primary
      through grade twelve (12). The endorsement for school nutrition
   shall be obtained by either:
      1. Completion of the requirements of Section 5(2) of this ad-
         ministrative regulation; or
   2. Obtaining the school food service and nutrition specialist
      (SFNS) credential issued by the American School Food Service
      Association (ASFSA); or
   (j) Learning and behavior disorders, grades eight (8) through
      twelve (12).
1. This endorsement shall be issued following completion of
   the requirements of Section 5(2) of this administrative regulation;
   and
2. This endorsement shall only be issued to candidates with
   preparation and certification for a base or restricted base certificate
   for the secondary grades eight (8) through twelve (12).

Section 5. Additional Certification. (1) A certificate extension
may be issued for any base or restricted base certificate area of
fered in Section 4(2) or (3) of this administrative regulation and
shall require:
   (a) A valid base or restricted base certificate, including a
      statement of eligibility;
   (b) Successful completion of the applicable assessments; and
   (c) Recommendation from an approved preparation program
      upon demonstration of competency in the relevant teaching meth-
      odology verified via coursework, field experience, portfolio, or other
      proficiency evaluation.
   (2) A certificate endorsement may be issued for any area listed
in Section 4(4) of this administrative regulation and shall require:
   (a) A valid base or restricted base certificate, including a
      statement of eligibility;
   (b) Successful completion of the applicable assessments; and
   (c) Recommendation from an approved preparation program.
   (3)(a) In order to assist districts in meeting the "highly qualified" teacher requirements of the No Child Left Behind Act of 2001, 20
U.S.C. 5301 et seq., the Education Professional Standards Board establishes an [time-limited option for professionally certified
teachers to add certificate endorsements and/or extensions.
   (b) [For applications received from the effective date of the
administrative regulation through June 30, 2006;] A certificate exten-
sion or certificate endorsement may be issued if an educator submits a completed application and meets the following require-
ments:
   1. A valid Kentucky professional teaching certificate;
   2. Current employment in a certified position or a bona fide
offer of employment in a certified position in a Kentucky public
school;
   3. Successful completion of the applicable content assess-
ments; and
   4. Either:
      a. A declared major in the area of certification being sought; or
      b. A combination of education, experience, professional develop-
awards and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as
evidenced by a score of ninety (90) points on the HOUSSE Index
contained within the application form, TC-HQ. Coursework must
be validated on the application by a Kentucky college or university
approved by the EPSB to serve as a "clearinghouse" for the
purpose of this option.
   (4) If a teacher currently holds a professional certificate in
the secondary grades, eight (8) through twelve (12) and applies for a
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certificate extension or endorsement in the same content area for middle school grades five (5) through nine (9), the teacher shall not be required to complete the content assessment.

Section 6. A candidate pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. Application for certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 16 KAR 4:040.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form TC-1, rev. 4/2004, Education Professional Standards Board;
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006 at 11 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 2006 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Alicia A. Sneed, Director of Legal Services
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation delineates the specific types of teaching certifications available in the Commonwealth.
(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 reassigns the responsibility of selecting assessments and determining acceptable scores for such certification with the Education Professional Standards Board.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the specific types of teaching certifications available in the Commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment eliminates the expiration date for the TC-HQ certification option.
(b) The necessity of this amendment to this regulation: The amendment assists both teachers and local districts in providing a permanent new route for the extension and addition of new subject areas and grade levels to the certificates of experienced teachers through the use of a combination of course work, experience, and other honors and professional development exhibited by the teacher.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the TC-HQ route for certificate addition or extension.
(d) How the amendment will assist in the effective administration of the statutes: The amendment removes the June 30, 2006 end date for the use of the TC-HQ certificate addition or extension method, which was piloted by the Education Professional Standards Board beginning on July 1, 2004.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 Kentucky school districts and experienced teachers seeking additional certification.
(4) Provide an analysis of how the entities identified in question (2) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) The actions that each of the regulated entities identified in question (2) will have to take to comply with this administrative regulation or amendment: No additional actions will be required.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (2)? There should be no additional costs.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to any state agency.
(b) On a continuing basis: There are no additional agency funds allocated or necessary for continuing implementation of regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No additional increases in fees or funding will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.
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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, and KRS 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

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

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

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

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(AMENDMENT)


RELATES TO: KRS 156.095, 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.026, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Boards. This administrative regulation establishes the qualifications for teachers of occupation-based career and technical education and implements the testing and internship requirements of KRS 161.030.

Section 1. (1) The certificates for occupation-based career and technical education established in this administrative regulation shall be issued and renewed for occupation-based career and technical education teachers employed by the public schools, the Office of Career and [Department-for] Technical Education of the Department of Workforce Investment [Development-Cabinet], the Kentucky Community and Technical College System, or the Kentucky Department of Education.

(2) The certificates may be issued for any information technology, industrial education, public service, health science, or human services occupation area for which programs may be offered under the Kentucky [State Plan for Career and Technical Education established in 704 KAR 3:04 or the Kentucky] Program of Studies established in 704 KAR 3:303.

(3) Certificates for occupation-based career and technical education established in this administrative regulation:
Should be initially awarded to teacher candidates who are employed based upon required occupational experience in the subject area to be taught; and
Shall not require a college degree for initial issuance.

Section 2. Issuance and Renewal of One (1) Year Provisional Certificates. (1) Initial Issuance. A provisional internship certificate for teaching occupation-based career and technical education, valid for teaching only the subject or subjects stated on the face of the certificate, shall be issued for a duration period of one (1) year upon completion of the following requirements:
(a) High school graduation or its equivalent determined by evidence of an acceptable program established in Kentucky for the general education development test administered by an approved testing center;
(b) Four (4) years of successful and appropriate occupational experience in the area to be taught, with:
1. At least two (2) years of the occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an accredited vocational preparation program for the occupation to be taught; and
2. The occupational experience confirmed by the Kentucky Department of Education, the Department of Workforce Investment [for Technical Education], or the Kentucky Community and Technical College System;
(c) The completion of the testing provisions established in 16 KAR 6:020; and
(d) An offer of employment from a local school district, the Kentucky Department of Education, the Department of Workforce Investment [for Technical Education], or the Kentucky Community and Technical College System.
(2) First renewal of one (1) year provisional certificates.
(a) The first renewal of the one (1) year provisional certificate shall require the successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010;
(b) The completion of three (3) semester hours of credit in occupation-based career and technical education laboratory/classroom management. This requirement may be met by successfully completing the New Teacher Institute sponsored by the Department of Workforce Investment [for Technical Education].
(c) Subsequent renewal of one (1) year provisional certificate.
(1) Any subsequent renewal of the one (1) year provisional certificate after the successful completion of the internship shall require the completion of a minimum of six (6) semester hours of college credit for each renewal selected from the sixty-four (64) semester hour planned program for the preparation of teachers in information technology, Industrial education, public service, health science, or human services occupations established in Section 4 of this administrative regulation; and
(d) Documentation of completion of four (4) days of professional development as required by KRS 156.095 and 158.070.
(4) Credit granted by a regionally- or nationally-accredited postsecondary institution for occupational proficiency based upon past relevant experience or credit by examination shall not be applied toward the provisions for the provisional certificate renewal requirements.
(5) [41] The one (1) year provisional certificate shall be limited to nine (9) one (1) year renewals for a total validity period of ten (10) years, which do not need to be consecutive.
(6) [66] Credit granted by a regionally- or nationally-accredited postsecondary institution for occupational proficiency shall be applied toward the certificate renewal requirements established in this section.
(7) [66] Upon completion of the sixty-four (64) hour planned program established in Section 4 of this administrative regulation, the teacher shall:
(a) Receive the professional certificate established in Section 3 of this administrative regulation valid for five (5) years; and
(b) Adhere to the subsequent renewal requirements established in Section 3(3) of this administrative regulation.

Section 3. Issuance and Renewal of the Professional Certificate. (1) Initial Issuance. A professional certificate for teaching occupation-based career and technical education, valid for teaching only the subject or subjects stated on the face of the certificate, shall be issued for a duration period of one (1) year upon completion of the following requirements:
(a) Compliance with Section 2(1) of this administrative regulation; and
(b) The completion of a planned program consisting of a mini-
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mm of sixty-four (64) semester hours of college credit established in Section 4 of this administrative regulation.

(2) First renewal.
(a) The first renewal shall require the successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010.
(b) Upon meeting the requirements established in paragraph (a) of this subsection, the teacher shall receive the professional certificate valid for an additional four (4) years.
(c) An occupation-based career and technical education teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial professional certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the professional certificate.

(3) Subsequent renewal. The professional certificate shall be renewed for subsequent five (5) year periods upon completion of:
(a) Three (3) years of teaching or occupational experience in the occupational specialty; or
(b) Six (6) semester hours of college credit related to the certification area.

Section 4. The planned program for occupation-based career and technical education teachers shall:
(1) Include a minimum of sixty-four (64) semester hours of college credit with at least twenty-four (24) semester hours in academic and professional education preparation during the first four (4) years of certificate validity;
(2) Utilize the proficiency evaluation established in 16 KAR 5:030;
(3) Be based upon the experienced teacher standards established in 16 KAR 1:010;
(4) Meet the specialty program association standards established in 16 KAR 5:010; and
(5) Be accredited by the Education Professional Standards Board using the applicable standards and procedures established in 16 KAR 5:010.

Section 5. Information Technology Teachers. (1) A teacher shall possess one (1) of the following credentials to instruct in the field of information technology:
(a) Provisional certificate established in Section 2 of this administrative regulation;
(b) Professional certificate established in Section 3 of this administrative regulation;
(c) Computer information systems certificate established in 16 KAR 2:010;
(d) Computer science endorsement established in 16 KAR 2:010; or
(e) Instructional computer technology endorsement established in 16 KAR 2:010.
(2) If a qualified teacher is not available for the position of information technology teacher, as attested to by the local school superintendent or the Commissioner of the Department of Workforce Investment [Technical Education], a one (1) year probationary certificate may be issued under the requirements established in 16 KAR 2:190.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006 at 11 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public, any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made un

less 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4806, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the qualifications for teachers of occupation-based career and technical education and implements the testing and internship requirements of KRS 161.030.
(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 rest the responsibility of selecting assessments and determining acceptable scores for such certification with the Education Professional Standards Board.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. This administrative regulation delineates the requirements for occupation-based and technical educator certification.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment clarifies that occupational assessments may not be used as proficiency evaluations which would circumvent the coursework requirements associated with maintaining the occupation-based certificate, and it updates the titling of administrative agencies governing occupation-based and technical education programs.
(b) The necessity of this amendment to this regulation: The amendment assures that those individuals pursuing the occupation-based certificates will actively pursue completing the course of study for those certificates without using university equivalency granted via competency testing.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.
(d) How the amendment will assist in the effective administration of the statute. The amendment clarifies that vocational assessments may not be used as proficiency evaluations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 Kentucky school districts, the Kentucky Department for Workforce Investment, 28 educator preparation programs, and educators seeking occupation-based certification.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative
regulation or amendment: The educator preparation programs and educators enrolling in occupation-based certificate programs will be affected by the implementation of this amendment in that each party must ensure continuous coursework progress toward completion of the required program.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The 175 school districts and the Kentucky Department for Workforce Investment will be positively affected by the availability of properly certified occupation-based teachers whose training reflects best practices in the profession and whose coursework will move forward as required by the regulation.

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

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to previously certified educators, preparation programs, or school districts.

(b) On a continuing basis: No additional agency funds allocated or necessary for continued implementation of the regulation. There is no additional cost to previously certified educators, educator preparation programs, or school districts.

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028, and 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

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

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

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

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
renewal of the probationary Interdisciplinary early childhood education certificate shall be for one (1) year based upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school as a teacher of children ages birth to primary;

(b) Completion of at least six (6) semester hours or its equivalent from the approved interdisciplinary early childhood education preparation program as indicated on the teacher's curriculum contract;

(c) Successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010. A teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate.

(2)(a) Subsequent one (1) year renewals of the probationary interdisciplinary early childhood education certificate shall require at least six (6) semester hours or its equivalent of additional credit from the approved interdisciplinary early childhood education preparation program as indicated on the teacher's curriculum contract.

(b) In compliance with the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.58, the total validity period of the probationary certificate for interdisciplinary early education shall not exceed three (3) years.

Any person upon successful completion of all program requirements for the approved interdisciplinary early childhood education preparation program established in 16 KAR 2:040, including successful completion of all required assessments established in 16 KAR 6:010, a professional certificate for interdisciplinary early childhood education, birth to primary, valid for five (5) years shall be issued.

(4) Program requirements for completion of the interdisciplinary early childhood education preparation program while serving on the probationary certificate established in this administrative regulation shall not include student teaching.

Section 4. Incorporation by Reference. (1) Form TC-BP, rev. 10/02, Education Professional Standards Board, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRCC August 11, 2006 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006 at 11 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4006, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the probationary early childhood teaching certificate.

(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 restricts the responsibility for selecting assessments and determining acceptable scores for such certification with the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for completing course work related to the probationary certificate so that teachers under this plan may qualify, under certain conditions, for "highly qualified" status according to the definitions outlined in the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.58.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes a 3-year time period for completing all coursework related to the probationary teaching certificate.

(b) The necessity of this amendment to this regulation: The amendment establishes a three-year time limit for all probationary certificate course work so that teachers under this plan may qualify, under certain conditions, for "highly qualified" status according to the definitions outlined in the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.58.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the requirements for the probationary certificate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment delineates a specific time period for the completion of all course work relative to the probationary certificate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 Kentucky school districts, 28 educator preparation programs, and teachers seeking probationary certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Teachers seeking probationary certification and those institutions providing such programs must ensure that all requirements for this certificate are completed within the three year time frame.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the entities.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The 175 school districts will be positively affected by the availability of probationary certified teachers who may qualify, under certain conditions, for "highly qualified" status according to the definitions outlined in the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.58.

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

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to certified educators, preparation programs, or school districts.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation. There is no additional cost to certified educators, educator preparation programs, or school districts.

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 161.020, 161.028, and 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

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

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

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

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

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

Revenues (+/-):
Expenses (+/-):
Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Annexment)

16 KAR 2:150. Probationary certificate for teachers of technology education.

RELATES TO: KRS 161.020, 161.028(1)(a), (c), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a), (c), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for their respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Pursuant to KRS 161.028, a teacher education institution is required to be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of technology education.

Section 1. Definition. "Qualified teacher" means a teacher who holds certification as a technology education teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for a Probationary Certificate for Teachers of Technology Education. (1) If a qualified teacher is not available for the position of technology education teacher as attested by the superintendent, the superintendent may request that a one (1) year probationary certificate be issued for a specific technology education offering as approved by the Division of Career and Technical Education to a teacher who:

(a) Holds one (1) of the following:

1. A valid classroom teaching certificate for teaching in the middle school or secondary school;

2. A bachelor's degree in a related area of concentration or major approved by a Division of Career and Technical Education technology consultant, and a designated university teacher educator;

(b) Has a cumulative grade point average of 2.5 on a 4.0 scale;

(c) Has a grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(d) Meets the minimum standards for admission to a teacher education preparation program at an approved institution of higher education;

(e) Develops a continuous plan for curriculum completion with an approved institution for technology education; and

(f) Documents 10 (ten) or more 40-hour blocks of work related experience or other exceptional life experience related to teaching technology education.

(2) Upon completion of all requirements established in subsection (1) of this section, the candidate shall be issued a probationary certificate for teachers of technology education, valid for one (1) year. The Division of Career and Technical Education, in cooperation with a technology education teacher educator, shall grant approval for each course to be taught by a probationary teacher.

Section 3. Requirements for Renewal of a Probationary Certificate for Teachers of Technology Education. (1) The first renewal of the probationary certificate for teachers of technology education shall be for one (1) year, based upon the successful completion of the following requirements:

(a) Evidence of employment by a participating district;

(b) Completion of eighteen (18) clock hours of orientation and management training provided through the technology education new teacher institute, within the first six (6) weeks of employment;

(c) Completion of at least six (6) semester hours from the continuous curriculum plan; and

(d) Successful completion of the internship program required by KRS 161.030 and KAR 7:010.

(2) The [continued one (1)-year renewal of the] probationary certificate may be renewed a maximum of two (2) times and shall require at the time of application proof of the completion of at least six (6) hours of additional credit from the preapproved continuous curriculum plan.

(3) Upon successful completion of all requirements for an approved teacher preparation program, including successful comple-
tion of all required assessments identified in 16 KAR 6:010, a professional certificate for industrial technology shall be issued valid for five (5) years.

Section 4. Requirements for Extending the Probationary Certificate. The probationary certificate may be extended to include additional technology education offerings upon recommendation by the Division of Career and Technical Education and the technology education teacher educator. The renewal requirements for the probationary certificate as outlined in Section 3 of this administrative regulation apply to extensions of the probationary certificate.

Section 5. Upon recommendation by the teacher education institution, teaching experience performed in a full-time position requiring certification for technology education teachers may be substituted for the student teaching requirement.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006 at 11 a.m. at the Offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 2006 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. Subsequent notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, (502) 564-4606, FAX: (502) 564-7060

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the probationary certificate for technology education teachers.

(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 restates the responsibility of selecting assessments and determining acceptable scores for such certification with the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for completing course work related to the probationary certificate so that teachers under this plan may qualify, under certain conditions, for "highly qualified" status according to the definitions outlined in the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7901(23) and 34 C.F.R. Part 200.56.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes a 3-year time period for completing all coursework related to the probationary teaching certificate.

(b) The necessity of this amendment to this regulation: The amendment establishes a three-year time limit for all probationary certificate course work so that teachers under this plan may qualify, under certain conditions, for "highly qualified" status according to the definitions outlined in the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7901(23) and 34 C.F.R. Part 200.56.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the requirements for the probationary certificate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment delineates a specific time period for the completion of all course work relative to the probationary certificate.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 Kentucky school districts, 29 educator preparation programs, and teachers seeking probationary certification.

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

(a) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Teachers seeking probationary certification and those institutions providing such programs must ensure that all requirements for this certificate are completed within the three year time frame.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The 175 school districts will be positively affected by the availability of probationary certified teachers who may quality, under certain conditions, for "highly qualified" status according to the definitions outlined in the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7901(23) and 34 C.F.R. Part 200.56.

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

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to certified educators, preparation programs, or school districts.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation. There is no additional cost to certified educators, educator preparation programs, or school districts.

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.
VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, and KRS 161.030.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no revenue generated.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no revenue generated.
   (c) How much will it cost to administer this program for the first year? There should be no cost.
   (d) How much will it cost to administer this program for subsequent years? There should be no cost.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)


RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.020, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of exceptional children.

Section 1. Definition. "Qualified" means a teacher who holds the appropriate certification as a teacher of exceptional children unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. If a qualified teacher is not available for the position of teacher of exceptional children as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary certificate be issued as provided in this administrative regulation.

(a) A valid classroom teaching certificate or an internship statement of eligibility for grades K-4, 1-8, P-5, 5-9, or 5-8, shall be a prerequisite for a one (1) year probationary certificate for learning and behavior disorders, grades P-12; for hearing impaired, grades P-12; and for visually impaired, grades P-12.

2. The applicant shall have enrolled in a preparation program in the certification area for which application is being made, and shall have completed a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(b)1. A valid classroom teaching certificate or an internship statement of eligibility for grades 7-12, 8-12, all grades, or 9-12 shall be a prerequisite for a one (1) year probationary certificate for learning and behavior disorders, grades P-12; for the endorsement for learning and behavior disorders, grades 8-12; for hearing impaired, grades P-12; and for visually impaired, grades P-12.

2. The applicant shall have enrolled in a preparation program in the certification area for which application is being made, and shall have completed three (3) semester hours in the teaching of reading and a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(c)1. A valid classroom teaching certificate or an internship statement of eligibility for grades K-4, 1-8, 5-8, 7-12, P-5, 5-9, 8-12, all grades, or 9-12 shall be a prerequisite for a one (1) year probationary certificate for teaching the moderately and severely disabled, grades P-12.

2. The applicant shall have enrolled in a preparation program for teaching the moderately and severely disabled and shall have completed nine (9) semester hours of credit from the special education component of the approved curriculum for teaching the moderately and severely disabled.

(d)1. A certificate for teaching exceptional children, including interdisciplinary early childhood education, shall be a prerequisite for a one (1) year probationary certificate for teaching learning and behavior disorders, grades P-12; the endorsement for learning and behavior disorders, grades 8-12; hearing impaired, grades P-12; visually impaired, grades P-12; or moderately and severely disabled, grades P-12.

2. The applicant shall have enrolled in a preparation program in the certification area for which application is being made, and shall have completed a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(2) The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services.

(3)(a) The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Division of Exceptional Children Services. Teachers employed after the fall conference shall complete these six (6) hours of training during the spring conference of the Council for Exceptional Children; or
(b) If the applicant is unable to attend either the fall conference or the spring conference, the applicant shall complete an additional six (6) clock hours of training conducted or approved by the Kentucky Department of Education, Division of Exceptional Children Services, through six (6) clock hours of training conducted or approved by the Kentucky Department of Education, Division of Exceptional Children Services, through (1) one (1) of the state's eleven (11) special education cooperatives. The applicant shall contact the Division of Exceptional Children Services to schedule the training. The training shall be similar to the topics covered at the conferences.

(4) The Kentucky Department of Education shall report to the Education Professional Standards Board the names of the certificated teachers of exceptional children who have not completed the training requirements established in subsections (2) and (3) of this section by June 30 of each year for the preceding school year.

(5) Application for a probationary certificate for a teacher of exceptional children shall be made on Form TC-19.

Section 3. The renewal of the one (1)-year probationary certificate for teachers of exceptional children may be renewed a maximum of two (2) times and shall require at the time of application, proof of completion of a minimum of six (6) semester hours of additional credit from the special education component to be completed by September 1 of the year of expiration.

Section 4. Upon recommendation by the teacher education institution, teaching experience performed in a full-time position requiring certification for teachers of exceptional children shall be substituted for the special education portion of the student teaching requirement.

Section 5. An applicant holding a classroom teaching certificate who is recruited into a position for teachers of exceptional children under this administrative regulation shall complete the assessment requirements identified in 18 KAR 2:010 and 18 KAR
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6:010 for teaching exceptional children, grades primary through twelve (12).


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chair
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006 at 11 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 2006 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-460, fax (502) 564-7060.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the probationary teaching certificate for teachers of exceptional children.

(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 restates the responsibility of selecting assignments and determining acceptable scores for such certification with the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation delineates the requirements for completing course work related to the probationary teaching certificate so that teachers under this plan may qualify, under certain conditions, for "highly qualified" status according to the definitions outlined in the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.56.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes a three-year time period for completing all coursework related to the probationary teaching certificate and clarifies the certified teacher's responsibility to receive training conducted or approved by the Kentucky Department of Education, Division of Exceptional Children Services.

(b) The necessity of this amendment to this regulation: The amendment establishes a three-year time limit for all probationary certificate course work so that teachers under this plan may qualify, under certain conditions, for "highly qualified" status according to the definitions outlined in the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.56.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the requirements for the probationary certificate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment delineates a specific time period for the completion of all course work relative to the probationary certificate.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 Kentucky school districts and teachers seeking probationary certification.

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

(i) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not need to take any additional action. Teachers seeking probationary certification will be affected by the time limit required to complete their necessary course work.

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

(iii) As a result of compliance, what benefits will accrue to the entities identified in question (3): The 175 school districts will be positively affected by the availability of probationary certified teachers who may qualify, under certain conditions, for "highly qualified" status according to the definitions outlined in the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.56.

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

(i) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to certifying educators, preparing programs, or school districts.

(ii) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation. There is no additional cost to certified educators, educator preparation programs, or school districts.

(iii) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

(iv) 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 increases in fees or funding will be necessary.

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

(vi) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028, and 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

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

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

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

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)


RELATED TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.026 requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. This administrative regulation establishes the probationary certificate for middle school teachers and the requirements for issuance and renewal of this certificate.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification as a middle school teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for Issuance of the Probationary Certificate for Middle School Teachers, Grades Five (5) Through Nine (9). (1) If a qualified teacher is not available for the position of middle school teacher at the grade level and content area necessary as attested by the local superintendent, the superintendent may request a one (1) year probationary certificate for a teacher who:
(a) Holds at least a valid Kentucky teaching statement of eligibility or Kentucky teaching certificate issued by the Education Professional Standards Board;
(b) Has a cumulative grade point average of 2.5 on a 4.0 scale;
2. Has a grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;
(c) Has an offer of employment from a Kentucky school district or accredited nonprofit school in grades five (5) through nine (9) in a content area or areas;
(d) Has enrolled in an approved middle school preparation program for the content area or areas for which certification is sought; and
(e) Has successfully completed at least twelve (12) semester credit hours of content coursework in each content area for which certification is sought.

(2) Application shall be made on Form TC-MG.

(3) Compliance with the requirements established in subsection (1)(d) and (e) of this section shall be verified by submission of a curriculum contract completed by the teacher education institution with an approved middle school preparation program in the content area or areas for which certification is sought.

(4)(a) Upon completion of all requirements established in this section, the applicant shall be issued a probationary certificate for middle school teachers in the content area or areas valid for one (1) year.

(b) The probationary certificate shall be valid for teaching grades five (5) through nine (9) in the content area or areas indicated on the face of the certificate.

Section 3. Requirements for Renewal of a Probationary Certificate for Middle School Teachers, Grades Five (5) Through Nine (9). (1) The first renewal of the probationary certificate for middle school teachers shall be for one (1) year based upon successful completion of the following requirements:
(a) Evidence of employment in a Kentucky school district or nonprofit school in grades five (5) through nine (9) in the content area or areas indicated on the initial probationary certificate;
(b) Completion of at least six (6) semester hours or its equivalent from the approved middle school preparation program as indicated on the teacher's curriculum contract; and
(c) Successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010. Teachers who have successfully completed the Kentucky Teacher Internship Program prior to issuance of the Initial probationary certificate or who are not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate.

(2)(a) Subsequent one (1) year renewals of the probationary certificate for middle school teachers shall require at least six (6) semester hours or its equivalent of additional credit from the approved middle school preparation program as indicated on the teacher's curriculum contract.

(b) In compliance with the federal No Child Left Behind Act of 2001, requirements established in 20 U.S.C. 7201(20) and 34 C.F.R. Part 200.56, the total validity period of the probationary certificate for middle school teachers shall not exceed three (3) years.

(3) Upon successful completion of all program requirements for the approved middle school preparation program, including successful completion of all required assessments established in 16 KAR 7:010, a professional certificate for teaching middle school established in 16 KAR 2:010 and valid for five (5) years shall be issued.

(4) Program requirements for completion of the middle school preparation program while serving on the probationary certificate for middle school teachers shall not include student teaching.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2006 at 11 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by
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September 22, 2006 five (5) workdays 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 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 2, 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7660.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation modifies the requirements for the probationary certificate for middle school teachers.
(b) The necessity of the administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 vests the responsibility of selecting assessments and determining acceptable scores for such certification with the Education Professional Standards Board.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for completing course work related to the probationary certificate so that teachers under this plan may qualify, under certain conditions, for "highly qualified" status according to the definitions outlined in the Federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.56.
(e) This is an amendment to an existing administrative regulation, provide a brief summary of:
(a) The amendment will change this existing administrative regulation: The amendment establishes a 3-year time period for completing all coursework related to the probationary teaching certificate.
(b) The necessity of this amendment to this regulation: The amendment establishes a three-year time limit for all probationary certificate course work so that teachers under this plan may qualify, under certain conditions, for "highly qualified" status according to the definitions outlined in the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.56.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the requirements for the probationary certificate.
(d) How the amendment will assist in the effective administration of the statutes: The amendment delineates a specific time period for the completion of all course work related to the probationary certificate.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 Kentucky school districts, 28 educator preparation programs, and teachers seeking probationary certification.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Teachers seeking probationary certification and those institutions providing such programs must ensure that all requirements for this certificate are completed within the three year time frame.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the entities.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The 175 school districts will be positively affected by the availability of probationary certified teachers who may qualify, under certain conditions, for "highly qualified" status according to the definitions outlined in the Federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.56.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to certified educators, preparation programs, or school districts.
(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation. There is no additional cost to certified educators, educator preparation programs, or school districts.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.
(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 additional increases in fees or funding will be necessary.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increases any fees.
(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, and KRS 161.030.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no revenue generated.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no revenue generated.
(c) How much will it cost to administer this program for the first year? There should be no cost.
(d) How much will it cost to administer this program for subsequent years? There should be no cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)


RELATES TO: KRS 161.020, 161.025, 161.027, 161.030
STATUTORY AUTHORITY: KRS 156.070, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed and approved by the Education Professional Standards Board [by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education]; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates [on the basis of standards and procedures recommended by the council and approved by] the Education Professional Standards Board [state board]. KRS 161.027 moreover, mandates testing and internship requirements for principals. This administrative regulation establishes appropriate certificate conditions for their issuance and renewal, and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for Preparation-Certification of Professional School Personnel for career and technical [vocational] education administrators.

Section 1. [(4)] The certificate for administration, supervision, and coordination of vocational education issued only through January 4, 1888 and only under prior versions of this administrative regulation shall be issued in accordance with the pertinent Kentucky statute and State Board of Education administrative regulations even after an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for Preparation-Certification of Professional School Personnel, as incorporated by reference in KRS 161.040.

(2) The certificate for administration, supervision, and coordination of vocational education does not of itself qualify the holder for any vocational education position but rather it is designated as one of the several requirements for certain positions of administration, supervision, and coordination as identified in the Kentucky State Plan for Vocational Education, as incorporated by reference in 780 (705) KAR 1.010.

(3) The duration of the certificate for administration, supervision, and coordination of vocational education shall be for continuing service.

(4) The certificate for administration, supervision, and coordination of vocational education programs may be issued for an initial period of one (1) year upon completion of eight (8) semester hours credit, from the prescribed curriculum and upon completion of the other nonacademic prerequisites. The remaining curriculum requirements shall be completed by September 1 of the calendar year following the year of initial issuance. The certificate may then be renewed for continuing service.

(5) When a qualified person is not available for a critical administrative position, the Superintendent of Public Instruction may approve a one (1) year endorsement of a vocational teaching certificate for the administration, supervision, and coordination of vocational education, provided the application includes a plan of in-service growth and development showing how the applicant and his employer will work toward meeting the full requirements.

(6) The provisions of this section shall expire on January 4, 1888. Instead, new candidates may qualify for the certificate for vocational school principal outlined in Section 2 of this administrative regulation or the certificate for vocational education supervision and coordination outlined in Section 3 of the administrative regulation.

Section 2. (1) The certificate for career and technical [vocational] school principal shall be issued in accordance with the pertinent Kentucky statutes and Education Professional Standards Board [State Board of Education] administrative regulations to an applicant who has at least three (3) [five (5)-to-five (5)] years of teaching experience in a career and technical [vocational] education teaching assignment and who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures for approval of preparation programs as outlined in 16 KAR 5:010 [incorporated in the Kentucky Standards for Preparation-Certification of Professional School Personnel, 16 KAR 6:013, TEC 600].

(2) The certificate shall be issued and renewed in accordance with the [licensing and internship] provisions of KRS 161.027 and related administrative regulations.

(3a) The initial certificate for career and technical [vocational] school principal shall be issued for a duration period of one (1) year upon successful completion of the approved curriculum and the tests prescribed under KRS 161.027 and 16 KAR 6:020 and upon obtaining employment for an internship period as principal or assistant principal of a career and technical [vocational] school. During the period of validity of the one (1) year certificate the internship program for career and technical [vocational] school principals as outlined in KRS 161.027 shall be completed. Upon successful completion of the internship, the certificate shall be extended for four (4) years.

(3b) The certificate shall be renewed subsequently for five (5) year periods. Each five (5) year renewal thereafter shall be for the completion of two (2) years of experience as a career and technical [vocational] school principal, or three (3) semesters hours of additional graduate credit related to the position of career and technical [vocational] school principal, or forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

(4) Persons applying for the certificate for career and technical [vocational] school principal who satisfy the curriculum requirements and all other prerequisites, and who have completed at least two (2) years of successful full-time experience, including at least 140 days per year, as a career and technical [vocational] school principal, within a ten (10) year period prior to making application, will be exempt from the internship requirement for career and technical [vocational] school principal, but shall be required to pass the written examinations required by KRS 161.027 and the governing administrative regulation.

(5a) The certificate for career and technical school principal shall be valid for the position of principal at a career and technical school.

(5b) The hiring authority of a career and technical school may also employ as a principal a candidate who possesses the following qualifications:

1. A valid Kentucky certificate or statement of eligibility for instructional leadership school principal.

2. A valid Kentucky certificate for a career and technical education program.

3. A minimum of three (3) years of teaching experience in the field of career and technical education.

Section 3. (1) The certificate for career and technical education principal [vocational education supervision and coordination] shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education administrative regulations to an applicant who has at least three (3) [five (5)-to-five (5)] years of teaching experience in a career and technical [vocational] education teaching assignment and who has completed the approved program of preparation which corresponds to the certificate at a teacher education institu-
tion approved under the standards and procedures of the Education Professional Standards Board pursuant to 16 KAR 5:010 [incorporated in the Kentucky Standards for the Preparatory Certification of Professional School Personnel, 16 KAR 5:013, TEC 90:0].

(2) The certificate for career and technical [vocational] education supervision and coordination shall be issued for a duration period of five (5) years and shall be renewed subsequently for five (5) years. Each five (5) year renewal shall require the completion of two (2) years of experience as a supervisor or coordinator of career and technical [vocational] education, or three (3) semester hours of additional graduate credit related to the position of supervisor or coordinator of career and technical [vocational] education, or forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006 at 6:00 a.m., at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by September 22, 2006 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for the career and technical education administrator certification.

(b) The majority of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 restates the responsibility of selecting assessments and determining acceptable scores for such certification with the Education Professional Standards Board.

(d) How this administrative regulation currently assesses or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for career and technical education administrator certification.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment provides an additional option for the hiring of career and technical education administrators and removes language related to pre-1988 vocational administrator preparation programs, as well as language related to previous identification of those entities responsible for career and technical education in the Commonwealth.

(b) The necessity of this amendment to this regulation: The amendment provides an additional option for the hiring of career and technical education principals in situations where the number of appropriately certified candidates may not be available.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the current requirements for the career and technical education administration certification.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the language to more accurately reflect current titles and programs regarding the career and technical education administrator certification and provides an additional option for the hiring of these positions.

(3) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The educator preparation programs will be affected by clarifying the current certificate programs available for these positions. Educators seeking career and technical certification will have to comply with the requirements of this regulation to gain certification.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The 175 school districts and the Kentucky Department for Workforce Investment will be positively affected by the availability of properly certified career and technical education administrators whose training reflects best practices in the profession. It provides districts with additional options in hiring these positions.

(4) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to previously certified educators, preparation programs, or school districts.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation. There is no additional cost to previously certified educators, educator preparation programs, or school districts.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.
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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, and KRS 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD

Amendment

16 KAR 5:040. Admission, placement, and supervision in student teaching.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.042

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that an educator preparation [a-teacher-education] institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate be issued to a person who has completed a program approved by the Education Professional Standards Board. KRS 161.042 requires the Education Professional Standards Board to promulgate an administrative regulation relating to student teachers, including the qualifications for supervising teachers. This administrative regulation establishes the standards for admission, placement, and supervision in student teaching.

Section 1. Definition. "Cooperating teacher" or "supervising teacher" means a teacher employed in a school in Kentucky who is contracting with an educator preparation [a-teacher-education] institution to supervise a student teacher for the purpose [purpose] of fulfilling the student teaching requirement of the approved educator [teacher] preparation program.

Section 2. Cooperating Teacher Eligibility Requirements (1) Except as provided in subsection (2) [or-(3)] of this section, the cooperating teacher, whether serving in a public or nonpublic school, shall have:

(a) A valid Kentucky teaching certificate for each grade and subject taught;
(b) Attained Rank II certification;
(c) At least three (3) [four (4)] years of teaching experience on a Professional Certificate; and
(d) Taught in the present school system at least one (1) year immediately prior to being assigned a student teacher.

(2) If a cooperating teacher has not attained Rank II certification, the teacher shall have attained a minimum of fifteen (15) hours of approved credit toward a Rank II within a minimum period of the requirement shall be waived if the teacher:
(a) Has at least twenty (20) years of teaching experience; and
(b) Has worked as a cooperating teacher during the past [five (5)] years.

(3) Teachers assigned to a teaching position on the basis of a probationary or emergency certificate issued by the Education Professional Standards Board under KAR Title 16 shall not be eligible for serving as a cooperating teacher.

(4) In selecting a cooperating teacher, the district shall give consideration to the following criteria:
(a) A demonstrated ability to engage in effective classroom management techniques that promote an environment conducive to learning;
(b) An ability to model best practices for the delivery of instruction;
(c) A mastery of the content knowledge or subject matter being taught;
(d) The demonstration of an attitude and ability to contribute to the mentoring and development of a preservice educator;
(e) An ability to use multiple forms of assessment to inform instruction; and
(f) An ability to create a learning community that values and builds upon student's diverse cultures.

Section 3. Admission to Student Teaching. In addition to the appropriate sections of the National Council for Accreditation of Teacher Education (NCATE) standards and the additional standards and procedures established by the Education Professional Standards Board, each cooperating [teacher-education] institution shall determine minimum standards for admission to and placement in student teaching which shall include the procedures established in this section. Admission to student teaching shall include a formal application procedure for each teacher candidate.

(1) A record or report from a valid and current medical examination, which shall have included a tuberculosis test, shall be placed on file with the admissions committee.

(2) Prior to and during the student teaching experience, the teacher candidate shall adhere to the professional code of ethics for Kentucky School Personnel established in 16 KAR 1.020.

Section 4. Teacher-student Ratio. The ratio of student teachers to cooperating teachers shall be one (1) to one (1).

Section 5. College Supervisor [Coordinator]. (1) The college supervisor [coordinator] shall make [a] periodic observations [observation] of the student teacher in the classroom and shall prepare a written report on each observation and share it with the student teacher.

(2) The observation reports [report] shall be filed as a part of the student teacher record and also used as a validation of the supervisory function.

(3) A student teacher shall receive periodic and regular on-site observations [observation/s] and critiques [ critique ] of the actual teaching situation a minimum of four (4) times excluding seminars and workshops.

(4) The college supervisors [coordinator] shall be available to work with the student teacher and personnel in the cooperating school regarding any problems [on a problem] that may arise relating to the student teaching situation.

Section 6. Professional Experience. (1) In addition to the appropriate NCATE standards incorporated by reference under 16 KAR 5.010, the educator preparation [teacher-education] institution shall provide an opportunity for the student teacher to assume major responsibility for the full range of teaching duties in a real school situation under the guidance of qualified personnel from the educator preparation institution and [of-higher-education or] the cooperating elementary, middle, or high [secondary] school. In placing the student teachers in classroom settings, the educator preparation program and the school district shall make reasonable
efforts to place student teachers in settings that will provide experiences, situations, and challenges similar to those encountered by first year teachers.

(2) Each educator preparation [teacher education] institution shall provide a full professional semester to include a period of student teaching for a minimum of twelve (12) weeks, full day, or equivalent, in school settings that correspond to the grade levels and content areas of (within the grade levels, corresponding to) the student teacher's certification program.

Section 7. Compensation of Cooperating Teachers. (1) The Education Professional Standards Board shall contract with the local school district, or make other appropriate arrangements, for the direct service of a cooperating teacher to each student teacher.

(2)(a) The educator preparation [teacher education] institution shall electronically submit a report of all cooperating teachers and their corresponding student teachers to the Education Professional Standards Board:

1. On or before October 15 for a cooperating teacher supervising a student teacher during the fall semester; or
2. On or before February 15 (March 1) for a cooperating teacher supervising a student teacher during the spring semester.

(b) Each report shall include:

1. The number of contract weeks that the cooperating teacher is working with each student teacher for that semester;
2. The cooperating teacher's full name and certificate number;
3. The student teacher's full name, Social Security number, [and] demographic data, and contact information;
4. The student teacher's preparation and certification area by assigned certification code;
5. The student teacher's anticipated graduation date; and
6. The names [and] assigned codes [of] the school and school district where the cooperating teacher is employed and the student teaching requirement is being fulfilled. If the cooperating teacher is employed in a nonpublic school which meets the state performance standards as established in KRS 156.105, or which has been accredited by a regional or national accrediting association, the institution shall submit the name, assigned code, and address of the school.

(c) If an educator preparation [teacher education] institution fails to provide the report by the date established in paragraph (a) of this subsection, the Education Professional Standards Board shall not be liable for payment under this administrative regulation.

(3)(a) Upon receipt of the report, the Education Professional Standards Board shall submit a "Cooperating Teacher Payment Voucher" to each cooperating teacher.

(b) The voucher, or its electronic equivalent if available, shall be signed by the cooperating teacher, building principal, and the college supervisor [coordinated] as verification of the cooperating teacher's service to the student teacher.

(c) To be eligible for compensation under this administrative regulation, the cooperating teacher shall submit the completed voucher to the Education Professional Standards Board:

1. On or before December 15 for a cooperating teacher supervising a student teacher during the fall semester; or
2. On or before May 1 [15] for a cooperating teacher supervising a student teacher during the spring semester.

(d) If a cooperating teacher fails to provide the completed voucher, or its electronic equivalent, by the date established in paragraph (c) of this subsection, the cooperating teacher shall not be eligible to receive any compensation available under this administrative regulation.

(4)(a) The maximum amount of the per-semester payment to a cooperating teacher shall be determined based upon available funding allocated under the biennial budget bill and the total number of weeks served by all cooperating [student] teachers reported for the fiscal year.

(b) The payment shall be allocated to a cooperating teacher based upon the number of weeks [semesters] the cooperating teacher supervises a student teacher as reported in subsections (2) and (3) of this section.

(5) The per-semester payment to a cooperating teacher shall not exceed the maximum amount established in paragraph (a) of this subsection.

(6) Payments to cooperating teachers shall be disbursed to the school districts or cooperating teachers in nonpublic schools by the Education Professional Standards Board.

(a) On an annual basis; and

(b) On or before June 15.

(6) Compensation to cooperating teachers shall be provided under this administrative regulation if state funds are appropriated for this purpose. Payment of state funds under this administrative regulation shall:

(a) Be a supplement to the compensation provided by an educator preparation [teacher education] institution to a cooperating teacher who is supervising an institution's student teacher; and

(b) Not supplant the educator preparation [teacher education] institutions' compensation responsibility.

Section 8. Incorporation by Reference. (1) "Cooperating Teacher Payment Voucher", revised 7/2000, is incorporated by reference.

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TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006 at 11 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 2006 five workdays 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 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4806, fax (502) 564-7090.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for admission, placement, and supervision of student teachers and guidelines for selection and compensation of cooperating teachers.

(b) The necessity of this administrative regulation: KRS 161.020, 161.025, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining a certificate. KRS 161.042 requires that the Education Professional Standards Board establish standards for colleges, universities, and local school districts to provide professional laboratory experiences for student teachers in preparation for the education profession and guidance for selection of supervising teachers and schools.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 161.042 requires the Education Professional Standards Board to establish standards and guidelines for admission, placement, and supervision in student teaching.
at the college, university, and district level.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the guidelines for admission to student teaching, selection of supervising teachers, and responsibility of colleges, universities, and local school districts to provide laboratory experiences. Guidelines and timelines for compensation of supervising teachers are detailed for what is to be reported.

(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 updates the guidelines on the selection of supervising teachers, clarifies terminology, clarifies student teacher placement, and provides deadlines for receiving compensation.

(b) The necessity of this amendment to this regulation: The amendment will increase the pool of supervising teachers eligible to serve and provide districts and colleges/universities with additional expectations in determining the assignment of student teachers and supervising teachers for each class period of the day.

(c) How the amendment conforms to the content of the authorizing statute: The authorizing statute, KRS 161.042 requires that the Education Professional Standards Board establishes guidelines for admission, placement, and supervision in student teaching.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the guidelines and procedures for colleges, universities and local school districts and will insure that the state's new educators are properly prepared for the profession.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 Kentucky school districts, 28 educator preparation programs, and educators seeking to serve as supervising teachers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be required to comply with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Districts will be positively impacted by the extension of the deadline, allowing a more careful data collection, stronger controls, and the opportunity for correction. The Education Professional Standards Board will be positively affected by the correction of assignment problems prior to submission, rather than after submission.

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

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to previous cooperating teachers, preparation programs, or school districts.

(b) On a continuing basis: Supervising teacher compensation is based on available state funds. No additional agency funds allocated or necessary for continuing implementation of the regulation.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028, and 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

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

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

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

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 6:020. Written examination prerequisites for occupation-based career and technical education teachers.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3)(a) requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate certification tests prior to initial certification in Kentucky and serve a one (1) year internship. This administrative regulation establishes the tests and passing scores for occupation-based career and technical education teachers certified under 16 KAR 2:220.

Section 1. (1) All new information technology, industrial education, health science, human services occupation, and public service teacher applicants, and other applicants for occupation-based career and technical education teacher certificates both with and without a teacher preparation degree; and out-of-state applicants for occupation-based career and technical education certification with less than two (2) years of teaching experience shall successfully complete the appropriate written tests prior to initial Kentucky certification.

(2) Each applicant without an educator [pre-teacher] preparation degree shall successfully complete either the Pre-Professional Skills Test (PPST) or the COMPASS Test for communication skills and general knowledge.

(3) All applicants shall demonstrate subject matter competency via passage of the specialty test in the occupational area for which certification is to be granted or completion of the appropriate state or national industry license, certification, or registration as established in this administrative regulation.
(4) The certificates and examination prerequisites shall be divided into the following four (4) categories:
(a) Industrial education:
1. National Occupational Competency Testing Institute's (NOCTI) Teacher Occupational Competency Test (TOCT) if one (1) corresponding to the teaching specialty is available;
2. Kentucky Department of Education or Kentucky Department for Technical Education developed or identified assessment corresponding to the teaching specialty;
3. Appropriate state or national industry licensure, certification, or registration; or
4. Minimum postsecondary educational attainment in a related area of study;
(b) Health science and human services occupations. The appropriate state or national industry licensure, certification, or registration;
(c) Public-service. The appropriate state or national industry licensure, certification, or registration; or
(d) Information technology. The appropriate national industry-recognized information technology certification.

Section 2. The Educator Professional Standards Board shall require the specialty tests and passing scores or other examination prerequisites identified in this section for each new teacher applicant and each teacher seeking an additional certificate.

(1) Preprofessional Skills Test
(a) Reading - 107;
(b) Mathematics - 166; and
(c) Writing - 167.

(2) In lieu of the Preprofessional Skills Tests identified in subsection (1) of this section, a new teacher applicant may meet the testing requirement by obtaining the following COMPASS Test scores:
(a) Reading - 78;
(b) Prealgebra - 48; and
(c) Writing - 68.

(3) Specialty area tests or other examination prerequisites for occupation based certification (industrial education):
(a) Air conditioning technology. NOCTI Heating, Ventilation, and Air Conditioning (#144) - 63;
(b) Aviation technician. Federal Aviation Administration certified commercial license with instructor endorsement;
(c) Aviation maintenance technician. Federal Aviation Administration certified airframe and power plant;
(d) Major appliance technology. NOCTI Appliance Repair (#277) - 64;
(e) Auto body technology:
1. NOCTI Collision Repair/Refinishing Technology Test (#138) - 61; or
2. Automotive Service Excellence (ASE) certification;
(f) Automotive technology:
1. NOCTI Automotive Technician Test (#303) - 63; or
2. Automotive Service Excellence (ASE) certification;
(g) Building and apartment maintenance. NOCTI Building Trades Maintenance (#125) - 52;
(h) Wood manufacturing technology. NOCTI Cabinetmaking and Millwork (#124) - 43;
(i) Carpentry. NOCTI Carpentry (#207) - 58;
(j) Visual communication art. NOCTI Advertising and Design (#136) - 63;
(k) Diesel technology:
1. NOCTI Diesel Mechanics (#152) - 62; or
2. Automotive Service Excellence (ASE) certification;
(l) Computer-aided drafting. NOCTI Technical Drafting and Design (#339) - 63;
(m) Electrical technology. NOCTI Electrical Construction (#261) - 45;
(n) Electronics technology. NOCTI Electronics Technology (#253) - 44;
(o) Graphic technology. NOCTI Graphic Imaging Technology (#137) - 62;
(p) Heavy equipment operation. Commonwealth of Kentucky license for equipment taught;
(q) Industrial maintenance technology. NOCTI Industrial Technology (#076) - 44;
(r) Interior finishing and design. NOCTI Painting and Decorating (#135) - 44;
(s) Machine tool technology. NOCTI Precision Machining (#220) - 50;
(t) Masonry - NOCTI Masonry (#209) - 64;
(u) Multimedia:
1. NOCTI Graphic Imaging Technology (#137) - 62;
2. Macromedia Certified Professional; or
3. Adobe Certified Expert;
(v) Plumbing technology. NOCTI Plumbing (#110) - 55;
(w) Radio and television production. NOCTI Audiovisual Communication Technology (#249) - 52;
(x) Metal fabrication. NOCTI Sheet Metal (#211) - 60;
y) Small engine repair technology:
1. NOCTI Air-cooled Gas Engine Repair (#256) - 71; or
2. Equipment and Engine Training Council (EETC) Outdoor Power Equipment Certification;
(z) Welding:
1. NOCTI Welding (#121) - 53; or
2. American Welding Society (AWS) Certified Welder;
(aa) Industrial chemical technology. Bachelor's degree in chemistry or related sciences;
(bb) Construction. NOCTI Carpentry (#207) - 58;
c) Engineering technology. Bachelor's degree in engineering;
d) Environmental technology. No test identified;
e) Heavy highway construction. No test identified;
f) Manufacturing:
1. NOCTI Industrial technology (#076) - 44; or
2. NOCTI Precision Machining (#220) - 50;
g) Marine technology. NOCTI Marine Mechanics (#131) - 78; or
(h) Plastics technology. No test identified;
(i) Specialty area tests or other examination prerequisites for health science and human services occupations:
1. Barbering. The Kentucky Board of Barbering Instructors' License;
2. Cosmetology. Kentucky Board of Hairdressers and Cosmetologists Instructors' License;
(c) Health science. Registered Nurse License in Kentucky and meet applicable accrediting body state and federal requirements;
(d) Allied health sciences. Active licensure, certification, or registration by a state or nationally-recognized accrediting agency as a professional health care practitioner following completion of a minimum of an associate degree or technical diploma preparation program;
(e) Practical nursing. Registered Nurse License in Kentucky and meet applicable accrediting body state and federal requirements;
(f) Culinary arts. In the field of culinary arts, an individual must provide proof of completion of one (1) of the following prerequisites:
1. NOCTI Quantity Foods (#225) - 56;
2. NOCTI Quantity Food Preparation (#117) - 36; or
3. American Culinary Federation Professional Certification;
4. [4][4] Specialty area tests or other examination prerequisites for public service;
5. Law Enforcement. Certification as a police officer or police instructor from the Kentucky Law Enforcement Council;
6. Fire and rescue training. State Fire Commission Instructor Certificate;
7. EMS training. First Responder Instructor Certificate and EMT Instructor Certification by the Kentucky EMS Board; or
8. [4][4] Specialty area tests for information technology:
(a) Computing Technology Industry Association (CompTIA);
1. A+ Certification;
2. I-Net+ Certification;
3. Server+ Certification; or
4. Network+ Certification;
(b) Cisco Certified Network Associate (CCNA);
(c) Microsoft Certified Professional (MCP);
(d) Novell Certified Administrator (CNA); or
(e) NOCTI Computer Technology Test (#220) - 63 [no-test identified].
Section 3. Teacher applicants in any occupation-based career and technical education programs for which no appropriate specialty test is yet available shall not be required to take a specialty test, except for research and validation purposes. After a new program has been piloted and fully implemented a test shall be developed or identified and a new teacher applicant shall be required to pass a designated specialty test.

Section 4. (1) Applicants for initial certification may take the written tests on any of the dates established by the Kentucky Department of Workforce Investment [for Technical Education], with the tests to be administered on a regular basis.

(2) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Kentucky Department of Workforce Investment [for Technical Education].

(3) An applicant shall seek information regarding the dates and location of the tests and make application to the Kentucky Department for Technical Education for the appropriate tests prior to the deadlines established and sufficiently in advance of anticipated employment.

(4) Applicants shall authorize test results to be forwarded to the Education Professional Standards Board.

Section 5. Applicants shall pay an examination fee directly to the testing agency for the required tests. The testing agency shall publish the examination fee with the publication of testing dates.

Section 6. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations. All retakes shall meet the regularly scheduled testing dates. Initial certification shall not be granted until acceptable scores are achieved in each of the required areas.

Section 7. Assessment Recency. (1) Beginning September 1, 2003, an applicant for initial or additional Kentucky teacher certification shall comply with the assessment recency requirements established in this section.

(2) A test established in this administrative regulation shall be valid for five (5) years from the test administration date.

(3) A passing score on a test established in this administrative regulation and completed on or after January 1, 2002 shall be valid for five (5) years from the test administration date.

(4)(a) A teacher shall complete application for certification to the Education Professional Standards Board within the five (5) year validity period of the test and the passing score.

(b) A teacher who fails to complete application for certification to the Education Professional Standards Board within the five (5) year validity period of the test and the passing score shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(5) The test administration date shall be established by the National Occupational Competency Testing Institute or other authorized test administrator.

Section 8. The Education Professional Standards Board in conjunction with the Department of Workforce Investment [for Technical Education] shall collect data and conduct analyses of the impact of these tests as to permit a review of these administrative regulations on a regular basis.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006 at 11 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 2006, 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the written examination prerequisites and the corresponding passing scores for occupation-based career and technical education teachers.

(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 rests the responsibility of selecting assessments and determining acceptable scores for such certification with the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation delineates the written examination prerequisites and the corresponding passing scores for occupation-based career and technical education teachers.

(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 an additional option for pre-employment assessments to determine the suitability of a candidate for an occupation-based certificate program in a state university and adds the minimum acceptable assessment scores for new occupation-based certificates.

(b) The necessity of this amendment to this regulation: The amendment will eliminate the waiting period for new candidates for the occupation-based certificate by the use of the Compass Test, which is offered state-wide and may be scored immediately.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the required passing scores on assessments relative to occupation-based and technical education certificates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will eliminate the waiting period for new candidates for the occupation-based certificate by the use of the Compass Test, which is offered state-wide and may be scored immediately.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 Kentucky school districts, the Kentucky Department for Workforce Investment, 28 educator preparation pro-
(4) Provide an analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No actions will be necessary to comply with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The 175 school districts and the Kentucky Department for Workforce Investment will be positively affected by the immediate availability of properly certified teachers in occupation-based and technical education. It provides applicants with the information they will need to prepare to pass the appropriate assessment prior to certification. The educator preparation programs by having an assessment that will accurately predict that candidates have the appropriate knowledge to pass the required coursework.

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

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to previously certified educators, preparation programs, or school districts.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation. There is no additional cost to previously certified educators, educator preparation programs, or school districts.

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.029, and 161.030

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

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

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

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

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 7:010. Kentucky Teacher Internship Program.

RELATES TO: KRS 156.101, 161.026, 161.030, 161.048, 161.055
STATUTORY AUTHORITY: KRS 161.029(1)(a), 161.030, 161.122

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(5) requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year Internship. KRS 161.122(1) authorizes the Education Professional Standards Board to implement a pilot internship program. This administrative regulation establishes the requirements for the Kentucky Teacher Internship Program (and the Kentucky Teacher Internship Pilot Project).

Section 1. Definitions. (1) "Half-time basis" means teaching fifteen (15) hours per week in the intern's area of certification.
(2) "Instructional day" means a day that:
(a) The teacher intern is performing regular teaching responsibilities in an instructional setting, or is completing professional development for compensation from the district or employing school; and
(b) Does not include annual leave, sick leave, or other authorized or unauthorized leave time.


(4) "Teacher intern" means any new teacher or out-of-state teacher with less than two (2) years of successful teaching experience, preschool through grade twelve (12), who has obtained a provisional certificate and is seeking initial certification in Kentucky.

Section 2. Basis for Professional Judgment by the Beginning Teacher Committee. (1) A teacher intern and the beginning teacher committee shall follow the requirements established in this administrative regulation and in "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants."

(2) In arriving at its professional judgment, the beginning teacher committee shall take into consideration the progress of the teacher intern throughout the school year and, particularly, the level of performance that has been achieved near the end of the internship. The beginning teacher committee shall determine the progress and improvement of the teacher intern, pursuant to KRS 161.030, by:
(a) A systematic observation of classroom performance;
(b) An ongoing review of documented evidence developed by the intern of progress toward demonstration of the applicable standards [portfolio materials or pilot project Teacher [Work Sample] that shall be developed by the teacher intern]; and
(c) A review of the teacher intern's response to the suggestions and recommendations made by the beginning teacher committee during its meetings with the teacher intern throughout the internship.

(3) Throughout the internship, the teacher intern and the beginning teacher committee shall utilize the New Teacher Standards for Preparation and Certification established by the Education Standards Board. (Amendment)
Professional Standards Board in 16 KAR 1:010, Interns and their committees utilizing the new Teacher Performance Assessment shall use the benchmarks for each standard as outlined in the Teacher Performance Assessment Handbook.

(4) For interns and committees utilizing the new Teacher Performance Assessment, the intern shall also demonstrate a Leadership Standard. However, according to the Leadership Standard shall not apply to determination of the intern’s success or failure of the internship.

Section 3. Beginning Teacher Committee Membership Appointment. (1)(a) School districts shall maintain a pool of resource teachers and principals who have successfully completed the Kentucky Teacher Internship Program Committee training in order to assure eligibility for appointment to beginning teacher committees.

(b) The Kentucky Teacher Internship Program Committee training may be approved for up to twelve (12) hours of professional development credit toward the continuing education requirements for resource teachers pursuant to KRS 161.095 and Effective Instructional Leadership Act (EILA) credit for administrators pursuant to KRS 156.101.

(c) The employer(s) if the employing school district shall recommend principals and resource teachers for appointments by the Education Professional Standards Board to beginning teacher committees.

(2) If the intern is teaching at a nationally or regionally accredited nonpublic school without a principal, the accrediting organization’s guidelines for designating the school head or school leader shall be used by the employing school in making the recommendation for appointment of the principal or member. If no guidelines exist, the school shall provide a written rationale for the appointment to the Education Professional Standards Board for approval.

(3) Representatives of the teacher training institutions (institutions) shall consult the Education Professional Standards Board with respect to the school districts and the geographical area to be served by teacher educator members on beginning teacher committees. All teacher educators shall have completed the Kentucky Teacher Internship Program Committee training in order to assure eligibility for appointment to beginning teacher committees.

(5) The teacher training institution shall appoint a teacher educator no later than October 1 for the fall semester and February 15 for the spring semester. If the teacher intern is employed after the date required for appointment of the teacher educator, the teacher training institution shall appoint a teacher educator no later than ten (10) days after being notified by the district of the need for a teacher educator.

(6) If the superintendent or designated nonpublic school head or leader determines that a teacher educator is unsuitable for appointment, the superintendent or designated nonpublic school head or leader (designee) shall submit a written request for removal to the Education Professional Standards Board. The request shall contain the following:

(a) The facts and circumstances that form the basis for removal for cause; and

(b) The name of a qualified replacement submitted after consultation with the district or employing school Kentucky Teacher Internship Program Coordinator.

(7) The Education Professional Standards Board shall send written notification to the teacher intern, the beginning teacher committee, the superintendent or designated nonpublic school head or leader, and the teacher training institution of its decision regarding the request for removal.

Section 4. Requirements for Time in the Internship and Classroom Assignment. (1) The one (1) year internship shall be completed during one (1) of the following:

(a) No less than 140 instructional days of employment in a certified position in the intern’s area of certification for which the teacher intern receives compensation during one (1) school year; or

(b) Two (2) semesters totaling at least 140 instructional days of employment in a certified position in the intern’s area of certification for which the teacher intern receives compensation in two (2) consecutive school years.

(2) The internship shall be established for each teacher intern whose initial employment begins at any time during the school term except if the date of employment does not allow for completion of at least seventy (70) instructional days of employment during the school year. If the period of employment is less than seventy (70) instructional days in a school year, the local school district shall declare an emergency as provided in KRS 161.100, authorizing the superintendent to request an emergency teaching certificate. The employing school district shall be responsible for providing assistance and supervision to the new teacher during the period of employment under an emergency certificate.

(3)(a) The school district or nonpublic school shall complete and submit to the Education Professional Standards Board the Confirmation of Employment form or in hard copy if the electronic submission system is unavailable. The Confirmation of Employment shall be completed for each teacher intern and submitted to the Education Professional Standards Board:

1. On or before October 15 for a teacher intern participating in the internship for the fall semester; or

2. On or before February 15 for a teacher intern participating in the internship for the spring semester.

(c) The employer(s) if the employing school district shall submit the Confirmation of Employment after the dates established for submission of the Confirmation of Employment.

In paragraph (a) of this subsection, the school district or employing school shall submit the Confirmation of Employment in electronic form or in hard copy if the electronic submission system is unavailable within ten (10) days of the date of hire. A one (1) year internship certificate shall be issued in accordance with the provisions of 16 KAR 1:010 and 16 KAR 5:001.

(d) The district shall fail to report verification of enrollment in the internship by the applicable date established in paragraph (a) or (b) of this subsection, and there is insufficient time remaining for the teacher intern to complete the number of days required under subsection (1) of this section, the district shall declare an emergency as provided in KRS 161.100, and the teacher intern shall enroll in the Education Professional Standards Board for the new teacher to participate in the Kentucky Teacher Internship Program. The waiver request shall detail the number of days the teacher intern taught without a valid certificate or in the out of field report submitted to the Commissioner of the Department of Education in accordance with KRS 161.1221.

(4) A teacher intern may participate in the internship if the intern is teaching on at least a half-time basis. A school district or nonpublic school offering employment to a new teacher for part-time services which do not conform to the definition of half-time shall request a waiver using the Education Professional Standards Board form for the new teacher to participate in the Kentucky Teacher Internship Program. The waiver request shall detail how the part-time employment offered by the district or nonpublic school is commensurate with the half-time basis requirement of this administrative regulation.

(5)(a) Termination or resignation of the internship shall be prohibited unless a written resignation detailing the facts surrounding the resignation is received and approved by:

1. The superintendent or designated nonpublic school head or leader; and

2. The Education Professional Standards Board staff.

(b) A teacher intern who terminates or resigns the internship without the approval of the Education Professional Standards Board staff shall be recorded as unsuccessfully completing the internship for that school year.

(6) The internship shall be established in a classroom which corresponds to the certificate of the teacher intern. An internship shall not be established in a classroom designated as an alternative school, classroom, or program unless the district superintendent or designated nonpublic school head or leader submits a written request for a waiver to the staff of the Education Professional Standards Board.

The request shall include the following:

(a) The type of students that attend the alternative school,
classroom or program;
(b) The student selection and placement process;
(c) The level of support for students and faculty provided by the district or nonpublic school;
(d) The degree of administrative support within the program, classroom or school;
(e) The location and facility that houses the program, classroom or school;
(f) The instructional resources [that are] available to the faculty;
(g) The curriculum used by the program, classroom or school;
(h) The manner in which the program, classroom or school collaborates with other schools within the district;
(i) The current faculty and staff positions assigned to the program, classroom or school;
(j) A brief description of how a teacher intern placed in the alternative program, classroom or school could demonstrate that the teacher intern has met all of the applicable [new teacher] standards;
(k) Contact information for an individual who could provide additional information about the request; and
(l) A signed affidavit by the superintendent, the superintendent’s designee, or the designated nonpublic school head or leader confirming the information.

(7) The Education Professional Standards Board staff shall grant the waiver if there is a determination that the request and accompanying documentation sufficiently demonstrate that the level of support and services provided to the teacher intern assigned to an alternative agency, classroom, or program is equivalent to that provided to a teacher intern placed in a nonalternative setting.

(ii) If the waiver is granted, it shall remain in effect for the calendar year during which it is granted.

Section 5. Designation and Duties of Chair; Responsibilities of Resource Teacher, Teacher Intern, and Teacher Educator: Requirements for the Evaluation of Beginning Teacher Committee Meetings. (1) The principal member of the three (3) person beginning teacher committee shall serve as chair and shall be responsible for convening the committee and coordinating its efforts by scheduling observations and committee meetings. The chair shall be responsible for the timely submission of all documents and reports of the beginning teacher committee as required by this administrative regulation. All documents and reports shall be submitted through the electronic reporting system, or by hard copy if the electronic reporting system is unavailable. In addition, the chair shall:

(a) 1. Make three (3) official observation visits to the teacher intern’s classroom with each observation lasting one (1) hour in duration or one (1) class period; or
   2. Make two (2) one (1) hour or one (1) class period observation visits followed by an observation of the teacher intern’s one (1) hour or one (1) class period videotaped classroom lessons;
   (b) Conduct a lesson plan review prior to each of the three (3) observations and a post-observation conference after each observation;
   (c) Report progress observed and concerns to the committee at the scheduled committee meetings;
   (d) Monitor the time that the resource teacher spends with the teacher intern both in and out of class and sign the electronic version of the resource teacher time sheets or the hard copy of the resource teacher time sheets if the electronic reporting system is unavailable; and
   (e) Ensure that all program policies and procedures are followed.

(2) The resource teacher shall be a mentor to the teacher intern and assess the teacher intern’s progress in the internship.

(a) The resource teacher, upon completion of Kentucky Teacher Internship Program Committee Training and upon appointment, shall begin to assist the teacher intern.

(b) The resource teacher shall spend a minimum of twenty (20) hours working with the teacher intern in the classroom setting.

1. As a portion of the twenty (20) hours, the resource teacher shall conduct:
   a. Three (3) official observations with each observation lasting
   b. Two (2) observation lasting one (1) hour in duration or one (1) class period; or
   c. Two (2) observations lasting one (1) hour in duration or one (1) class period followed by an observation of the teacher intern’s one (1) hour or one (1) class period videotaped classroom lessons.

2. The observations shall be preceded by a pre-observation conference and lesson plan review and shall be concluded with a post-observation conference.

(c) Pursuant to the resource teacher requirements established in KRS 161.030(7), a resource teacher shall complete at least fifty (50) hours of out-of-class time identified in KRS 161 030 in consultation with the teacher intern to:

1. Assist the teacher intern in the development of professional growth plan;
2. Assist the teacher intern in areas identified in the professional growth plan;
3. Assist the teacher intern with instructional activities such as planning, management techniques, assessment, and parent conferences;
4. Arrange activities for the teacher intern such as attendance at seminars, conferences, or lectures offering educational assistance commensurate with the teacher intern’s professional growth plan;
5. Continually assess the teacher intern’s progress in the internship in relation to each of the new teacher standards; and
6. Enter and submit data into the online Resource Teacher Time Sheet or the hard copy of that document if the electronic reporting system is unavailable. This document is located within "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants," incorporated by reference.

(d) The resource teacher shall divide the consultation time required in paragraph (c) of this subsection into appropriate increments that provide support for the teacher intern throughout the semester. The resource teacher shall not spend this required consultation time with the teacher intern at required in school or district committee meetings, or any other activity for which the resource teacher receives compensation from the district or employing school, to include professional development activity.

(3) The teacher intern shall:

(a) Complete all requirements of the Kentucky Teacher Internship Program as established in KRS 161.030 and this administrative regulation, including compliance with the new teacher standards;
(b) Attend the orientation, pre-observation and post-observation conferences with individual committee members, and all beginning teacher committee meetings;
(c) Participate with the resource teacher in the fifty (50) hours of consultation time to be spent outside of an instructional setting;
(d) Cooperate with the resource teacher in completing the twenty (20) hours of instructional time, or other activity as required by this administrative regulation;
(e) Complete a professional growth plan (PGP);
(f) Prepare for three (3) official one (1) hour observations by each committee member during the year, including submitting a written lesson plan to the observer in a timely fashion prior to each visit. Each observation shall be one (1) hour in duration or one (1) class period;
(g) Develop documentary evidence of progress toward demonstration of the applicable standards [a portfolio or Pilot-Project Teacher-Work-Sample] for presentation and review at committee meetings; and
(h) Review all electronic documents completed by the beginning teacher committee and affix an electronic signature where required. If the electronic version of the documents are unavailable through the electronic reporting system, the teacher intern shall review and sign hard copy versions of these documents.

(4) The teacher educator shall:

(a) 1. Make three (3) official observations of the teacher intern with each observation lasting one (1) hour in duration or one (1) class period; or
   2. Make two (2) observations of one (1) hour in duration or one (1) class period, followed by an observation of the teacher intern’s one (1) hour or one (1) class period videotaped classroom lessons,
   (b) Conduct a lesson plan review prior to each of the three (3) observations and a post-observation conference after each obser-
vation; and
(c) Report progress observed and concerns to the committee at the scheduled committee meetings;
(5) Observations and committee meetings shall be scheduled in accordance with the following:
(a) The orientation meeting shall be held prior to the conduct of any formal classroom observations of the teacher intern;
(b) The second meeting shall be held between one (1) and sixty (60) instructional days following the orientation meeting and shall have been preceded by classroom observations by all committee members;
(c) The third meeting shall be held between sixty-one (61) and 110 instructional days following the orientation meeting and shall have been preceded by a second set of classroom observations by all committee members; and
(d) The fourth meeting shall be held between 111 and 140 instructional days following the orientation meeting and shall have been preceded by a third set of classroom observations by all committee members.
(6) Committees formed during the spring semester shall establish a meeting schedule that observes the time sequences established in subsection (4) of this section for the full-year teacher intern but which shall span the spring and fall semesters of two (2) school years.
(7)(a) Classroom observations conducted by committee members shall be:
1. Of at least one (1) hour or one (1) class period in duration; and
2. In the classroom or at the work station of the teacher intern.
(b) Additional classroom observations may be conducted at the option of the committee.
(c) All classroom observations shall be scheduled in advance in order to provide adequate time for preparation by the teacher intern.
(8) All members of the committee shall attend all four (4) meetings of the committee.
(9) At the orientation meeting of the beginning teacher committee, the following items shall be addressed:
(a) Expectations on the part of the teacher intern and each committee member;
(b) Procedures and materials for classroom observations;
(c) Use of classroom observation data in designing the teacher intern's professional growth plan;
(d) Requirements for the intern for compiling documentary evidence of progress toward demonstration of the applicable standards [portfolio or Pilot Project Teacher Work Sample];
(e) General schedule for the events to take place during the internship program; and
(f) Work of the resource teacher with the teacher intern.
(10)(a) The primary purposes of the second and third committee meetings shall be to provide the teacher intern with information based on classroom observations, review of the intern's documented evidence of progress toward demonstration of the applicable standards [portfolio or Pilot Project Teacher Work Sample], and reports of the resource teacher that shall support the growth of the teacher intern.
(b) The committee shall provide the teacher intern at the second, third, and fourth meetings with a consensus assessment of the teacher intern's progress in the internship in relation to each of the new teacher standards.
(11) The Professional Growth Plan (PGP) shall be initiated at the second committee meeting.
(12) The third meeting shall include a review of expectations for the performance of the teacher intern, taking into account the reflections of the teacher intern and the committee members, and incorporating these expectations and reflections into the PGP.
(13) The fourth meeting shall include a professional judgment by the committee members on the satisfactory completion of the one (1) year internship. This judgment shall be based upon the teacher intern's ability to meet the requirements of all new teacher standards.

Section 6. Decision by the Beginning Teacher Committee, Reporting, and Certification Actions. (1) The decision of the beginning teacher committee as to satisfactory completion of the internship for all full-year teacher interns shall be reported by the chair to the local school superintendent or other employer and to the Education Professional Standards Board by May 1 or no later than two (2) weeks following the final committee meeting, whichever occurs first. For midyear teacher interns completing the internship in December, the final report shall be submitted by December 15. The final report shall be accompanied by the resource teacher time sheets.
(2) If a teacher intern's performance is judged by the committee to be unsatisfactory, the teacher intern shall have the opportunity to repeat the internship during one (1) additional year contingent upon employment within the period of validity of the statement of eligibility for internship. If the teacher intern does not successfully complete the internship during the period of validity of the statement of eligibility, the teacher intern shall requalify for admission to the remaining one (1) year of internship by meeting the requirements in effect at the time of reapplication for certification.
(3)(a) If the teacher intern is unable to complete the internship within one (1) school year in accordance with the requirements of Section 5 of this administrative regulation, an intern report shall be submitted to the EPSB through the electronic system. By hard copy if the electronic system is unavailable within ten (10) days of the date the internship ceases.
(b) Under extraordinary circumstances and with the approval of the EPSB, the teacher intern may continue the internship during a subsequent school year if employed in a public or nonpublic accredited school. Extraordinary circumstances shall include:
1. Serious medical condition;
2. Temporary disability; or
3. Military deployment.
(c) The provisions of Section 4 of this administrative regulation shall not apply in this situation.

Section 7. Payments to Committee Members. (1) In accordance with the budgetary act, the Education Professional Standards Board shall contract with the local school district, or make other appropriate arrangements, for:
(a) The direct service of a resource teacher to each teacher intern;
(b) Participation in classroom observations and committee meetings; and
(c) The employment of substitute teachers to provide at least twenty (20) clock hours of released time for the resource teacher to observe and assist the teacher intern during normal working hours.
(2) A resource teacher shall:
(a) Not serve as a resource teacher for more than one (1) teacher intern concurrently; and
(b) Be paid a stipend in accordance with subsection (3) of this section.
(3)(a) Except as provided by paragraphs (b) and (c) of this subsection, the stipend shall be:
1. $1,400 for a year of service; and
2. Disbursed in accordance with KRS 161.030(6)(f) on a biannual basis corresponding to the semester in which the mentoring occurred or on an annual basis for full-year interns with payment being disbursed at the end of the one (1) year internship. The frequency of the disbursement shall be at the option of the district if the resource teacher is serving in a public school district. If the resource teacher is serving in a nonpublic school, the frequency of the disbursement shall be determined by the submission of the resource teacher time sheets.
(b) If the school or school district where the internship takes place fails to submit the time sheets by the date stipulated in Section 6(1) of this administrative regulation, the Education Professional Standards Board staff shall refuse payment of the stipend.
(c) The stipend shall be prorated if the required number of hours are not performed and documented in legitimate and appropriate pursuit of successful completion of the internship pursuant to the requirements of Section 5(2) of this administrative regulation.

Section 8. Use of the New Teacher Performance Assessment by Internship Participants [Participation in the Kentucky Teacher Internship Pilot Project]. (1) Beginning with the 2005-07 school

(5) [110] An intern in the pilot project shall be required to prepare for and complete for the pilot-project committee members three (3) official observations with each lasting one (1) hour or one (1) class period in duration. One (1) of the official observations shall be of a videotaped classroom lesson prepared by the intern and lasting one (1) hour or one (1) class period in duration.

(14) To the extent that they do not conflict with this section, all other provisions of this administrative regulation shall apply to the intern using the new Teacher Performance Assessment [internship pilot project].

(6) [145] Participation in the Kentucky Teacher Internship using the new The Teacher Performance Assessment [Pilot-Project] shall not alter any rights ordinarily afforded to teacher interns or employing schools or school districts under the Kentucky Teacher Internship Program. Use of the new Teacher Performance Assessment shall not form a basis for appeal of an intern's failure of the Kentucky Teacher Internship Program.

Section 9. Appeals. (1)(a) Appeals by teacher interns shall be reviewed by a committee of four (4) persons. The appeals committee shall include:

1. Ove (1) teacher;
2. Ove (1) principal;
3. Ove (1) teacher educator; and
4. The Executive Director of the Education Professional Standards Board, or his or her designee.

(b) The committee members shall be chosen from a pool of candidates appointed annually by the Education Professional Standards Board.

(c) An appeals committee member shall not take part in a decision in which the member has an interest or bias.

(2)(a) The teacher intern shall file the appeal within thirty (30) calendar days of the date written notice of failure of the internship is received by the teacher intern by certified mail return receipt requested. If the teacher intern fails to maintain a current address with the Education Professional Standards Board or refuses to claim the certified mail, the appeal shall be filed within thirty-five (35) days of the date the notice is mailed to the teacher intern's last known address.

(b) Upon receipt of the appeal, the Education Professional Standards Board shall send a copy to the members of the beginning teacher committees. Each member may file a written response within fifteen (15) days of receipt.

(3)(a) The appeals committee shall review the written appeal by the teacher intern, all beginning teacher committee reports, any additional documentation that accompanied the final report, and any written responses from the members of the beginning teacher committee.

(b) The appeals committee shall base its recommendation upon the following requirements:

1. Evidence of the teacher intern's ability to meet the requirements of the new teacher standards;
2. Appropriate documentation of at least twenty (20) hours in the instructional setting and fifty (50) hours outside normal working hours spent by the resource teacher in assisting the teacher intern;
3. Assignment of beginning teacher committee members in accordance with legal requirements;
4. Compliance with the requirements for the timing, content, reporting, and signing of teacher intern performance records, meeting and observation forms, and resource teacher time sheets; and
5. Agreement between teacher intern performance records, professional growth plans, beginning teacher committee meeting reports, and the final decision of the committee.

(4) The appeals committee shall make a recommendation to the Education Professional Standards Board on the appeal within sixty (60) days following the receipt of the appeal, unless good cause exists for additional time. The Education Professional Standards Board shall issue a final decision in each appeal reviewed by the appeals committee. The Education Professional Standards Board may consider the appeals committee recommendation and the records reviewed by the appeals committee in issuing its decision.
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(5) If the decision of the beginning teacher committee is not upheld, the Education Professional Standards Board shall issue the appropriate certificate to the teacher intern.

(6) If the decision of the beginning teacher committee is not upheld, the Education Professional Standards Board shall issue another Statement of Eligibility for Internship, unless:

(a) The teacher intern has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program; or

(b) The period of validity of the statement of eligibility has expired.

(7) If, during the appeal process, it becomes evident that the beginning teacher committee has committed some procedural violation during the internship which makes it impossible to determine if the teacher intern has in fact been unsuccessful, the Education Professional Standards Board may nullify the internship and allow the teacher intern to repeat the internship without penalty.

(8) If the teacher intern is not satisfied with the decision of the board based on the recommendation of the appeals committee, the teacher intern may request a formal hearing under the provisions of KRS Chapter 138. The request shall be filed in writing with the Executive Director of the Education Professional Standards Board within fifteen (15) calendar days of the date the board's decision is rendered by the teacher intern.

(9) In notifying the teacher intern of the board's decision, the Education Professional Standards Board shall send the decision of the board to the last known address of the teacher intern. If the teacher intern fails to notify the Education Professional Standards Board of an updated or correct address, or refuses to claim the certified mail when presented, the request for a hearing shall be filed in writing with the Executive Director of the Education Professional Standards Board within twenty (20) calendar days of the date the board's decision is mailed to the teacher intern by certified mail.

Section 10. A teacher intern who has not successfully completed the internship and has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program shall not be eligible for a Kentucky teaching certificate under this administrative regulation.

Section 11. An Intern serving the Internship in Interdisciplinary Early Childhood Education (IECE) must successfully demonstrate the new teacher standards as adapted to the IECE standards and shall utilize the IECE Observation Instrument Incorporated by reference.

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


(b) Statement of Eligibility/Confirmation of Employment form*, revised November 2004;

(c) KITIP Pilot Project Application Form*, June 2003 edition;

(d) Kentucky Teacher Internship Program Teacher Performance Assessment Handbook [Pilot Project Teacher Work Sample Guide]: June 2006 (August 2006 edition);

(e) Kentucky Teacher Internship Program Intern Performance Record, June 2006 edition;

(f) KITIP Pilot Project Intern Performance Assessment Record, August 2006 edition; and

(g) IECE Observation Instrument*, January 2005 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006 at 11 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 2006 five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements, duties of participants, timelines, and assessment of the Kentucky Teacher Internship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to codify the rights, duties, and responsibilities of all participants in the Kentucky Teacher Internship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 establishes the Education Professional Standards Board and empowers the Education Professional Standards Board to establish the standards and requirements for maintaining a teaching program. KRS 161.030(5) and KRS 161.030(5) provides that all new teachers and out-of-state teachers with less than 2 years of experience shall serve a 1-year internship. This administrative regulation complies with the requirements of KRS 161.030 by establishing appropriate timelines, assessments, and due process procedures for the 1-year internship.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration of the statute by complying with the requirements of KRS 161.030 by establishing the requirements, duties of participants, timelines, and assessments of the Kentucky Teacher Internship Program.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by establishing specific dates and a new scoring rubric and system of assessment for the Kentucky Teacher Internship Program. The amendment also implements training requirements for members of the Kentucky Teacher Internship Committee. This amendment removes references to and requirements of the Kentucky Teacher Internship Pilot Project which has ended. Any other proposed changes to this regulation are designed to improve the clarity of the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide notice to the participants of the Kentucky Teacher Internship Program of the changes to the scoring rubrics and assessments and to establish a reasonable transition timeline by which each school district must convert to using the new assessment procedures.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with the requirements of KRS 161.030 by establishing appropriate timelines, assessments, and due process procedures for the Kentucky Teacher Internship Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will improve the assessment currently used in the Kentucky Teacher Internship Program, making the internship a more beneficial experience for the intern.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administra-
tive regulation: This administrative regulation will affect approximately 3,000 applicants seeking initial teaching certification in Kentucky, 175 valid school districts, dozens of private schools along with their staff, and the 28 university and college educator preparation programs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts and private schools will have to ensure that their staff, who participate in the Kentucky Teacher Internship Program are trained to use the new scoring rubrics and assessments. The university and college preparation programs may choose to incorporate the new scoring rubrics and assessments into their programs. Regional universities are required by KRS 161.030 to provide training for the internship committee members, Trainers from these universities will need training to train the new models and processes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation. The Education Professional Standards Board will bear the cost of training all participants in the Kentucky Teacher Internship Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The new scoring rubrics and assessments will provide the Intern with more feedback. The new assessments focus on student learning and assessment and will provide the Intern with valuable classroom skills. School districts will benefit from well trained beginning teachers.

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

(a) Initially: $5,000,000
(b) On a continuing basis: $5,000,000

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds provided by the GA for the Kentucky Teacher Internship Program.

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in the regulation to allow for transition from the former rubrics and assessments to the new rubrics and assessments. Tiering is used to ensure that school districts will have sufficient time to allow their staff participating in the Kentucky Teacher Internship Program to be properly trained in the new procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1) and 161.030.

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

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

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

(c) How much will it cost to administer this program for the first year? There should be no revenue generated.

(d) How much will it cost to administer this program for subsequent years? There should be no revenue generated.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD

(AMENDMENT)


RELATES TO: KRS 161.020, 161.028(1)(a), (c). 161.030, 161.046, 161.048(5), 161.120
STATUTORY AUTHORITY: KRS 161.028(1)(a), (c), 161.030, 161.046(2), 161.048(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.046 and 161.048(5) establish the position of adjunct instructor and regulations for Professional Standards Board to promulgate administrative regulations to establish certification requirements. This administrative regulation establishes the minimum requirements for an adjunct instructor certificate.

Section 1. Definition. "Exceptional life or work experience candidate" means a person with recognized superiorly as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally accepted standards in the area in which certification is sought.

Section 2. Candidate Eligibility Requirements. (1) An adjunct instructor shall meet the requirements for good moral character as required in KRS 161.120 and the following requirements relating to educational and occupational experience:

(a) An adjunct instructor employed in middle school or secondary school shall hold:

1. A bachelor's degree from a regionally accredited Institution with:

   a. An A cumulative minimum grade point average of 2.50 on a 4.0 scale; or

   b. An minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; and

   c. A major, minor, or area of concentration in the specialty subject to be taught; or

2. A master's degree in the specialty subject to be taught from a regionally accredited Institution with the minimum grade point average established in subparagraph 1a of this paragraph.

(b) An adjunct instructor in elementary school or early childhood education program shall hold:

1. A bachelor's degree from a regionally accredited Institution with:

   a. An A cumulative minimum grade point average of 2.50 on a 4.0 scale; or

   b. An minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; and

   c. A major, minor, or area of concentration in a planned program of child development or a related area; or

2. A master's degree in a planned program of child development or a related area from a regionally accredited Institution with the minimum grade point average established in subparagraph 1a of this paragraph.

(c) An adjunct instructor for occupation based career and technical education-industrial education shall:
1. Be a high school graduate; and
2. Have at least four (4) years of appropriate occupational experience for the [industrial/educator] specialty to be taught and complete the specialty area examination prerequisite as identified in 16 KAR 6:020 or hold either an associate degree or technical diploma in a related area.

(2) An applicant for adjunct instructor certification who does not meet the minimum academic preparation requirements established in subsection (1) of this section may apply for this certificate as an exceptional life or work experience candidate.

(b) An exceptional life or work experience candidate shall be recommended by the employing school district and complete the application process established in subsection (3) of this section.

(c) An exceptional life or work experience candidate shall include the following information as verification of exceptional qualifications in the field of endeavor to be taught or service to be practiced:

1. Sufficient documentation that demonstrates to the local school district and the Education Professional Standards Board that an applicant is one who has exceptional life or work experience as defined in Section 1 of this administrative regulation and has the qualifications and abilities commensurate with the New Teacher Standards established in 16 KAR 1:010;
2. Documentation of achievement that may include academic and nonacademic preparation, distinguished employment, evidence of related study or experience, publications, professional achievement, or recognition attained for contributions to an applicant's field or endeavor; and
3. Recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations shall support exceptional life or work experience in this field.

(3) Form TC-25 signed by the local district superintendent and approved by the local board of education shall be submitted to the Education Professional Standards Board for each adjunct instructor. The application shall be accompanied by official transcripts of all college credits earned by the prospective adjunct instructor along with documentation of any exceptional competencies or experiences submitted in support of the application. Upon receipt of the application and appropriate documentation, a candidate meeting all of the requirements shall be issued a one (1) year adjunct instructor certificate.

Section 3. Orientation Program. Each local board of education shall provide for an orientation program for the adjunct instructors employed within the district. A detailed description of the orientation program shall be a part of the certificate application form. The orientation program shall include an emphasis on student safety, district policies and procedures, and pedagogical assistance commensurate with the New Teacher Standards established in 16 KAR 1:010.

Section 4. Incorporation by Reference. (1) "Form TC-25" revised 8/99, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006 at 11 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 2006, 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 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the prerequisites for educator certification as an adjunct instructor.

(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 rest the responsibility of selecting assessments and determining acceptable scores for such certification with the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines the requirements for adjunct instructor certification.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the requirement for adjunct instructor candidates in an occupation-based and technical education must complete the specialty area examination prerequisite as identified in 16 KAR 6:020 or hold either an associate degree or technical diploma in a related area.

(b) The necessity of this amendment to this regulation: The amendment ensures that adjunct instructor candidates in occupation-based and technical education meet minimum requirements before the granting of certification.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the requirements for obtaining and maintaining an adjunct instructor certificate for the occupation-based and technical education certificates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that adjunct instructor candidates in occupation-based and technical education meet minimum requirements before the granting of certification and more accurately reflect an educator's preparedness for certification as a teacher.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 Kentucky school districts, the Kentucky Department for Workforce Investment, and educators seeking adjunct certification.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
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(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. There should be no actions necessary to comply with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The 175 school districts and the Kentucky Department for Workforce Investment will be positively affected by the availability of properly certified teachers whose background and training reflect best practices in the profession. It provides applicants with the information they will need to prepare to pass the appropriate assessment prior to certification.

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

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to previously certified educators, preparation programs, or school districts.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation. There is no additional cost to previously certified educators, preparation programs, or school districts.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

(TIERING) Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.210, 161.028, and 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

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

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

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

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

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

Revenues (+): Expenditures (+): Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Dentistry

(AMENDMENT)

201 KAR 8:150. Dental application; examination.

RELATES TO: KRS 313.040
STATUTORY AUTHORITY: KRS 313.220
NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.220 requires the board to conduct the examinations of all applicants for a license and authorizes the board to promulgate administrative regulations relating to the practice of dentistry. This administrative regulation establishes the guidelines for filing the application form for licensure with the Board of Dentistry and establishes the guidelines for the examination for licensure.

Section 1. (1) The application form for general practice of dentistry shall be filled out in its entirety by each applicant. The application form shall be executed and sworn to before a notary and returned to the Kentucky Board of Dentistry. The board shall reject any application that does not comply with the requirements of all applicable administrative regulations from 201 KAR Chapter 8 and KRS Chapter 313.

(2) The examination shall consist of two (2) parts: a written examination, and a clinical examination.


(2) It may be inspected, copied, or obtained at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID NARRAMORE, Vice President
APPROVED BY AGENCY: July 14, 2006
FILED WITH LRC: July 18, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation amendment shall be held on September 22, 2006, at 10 am, at the Kentucky Board of Dentistry, located at 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 2006, five weekdays 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 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 amendment. A transcript of the public hearing will not be made unless a written request for a written 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 amendment. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person.

CONTACT PERSON: Ench T. Clark, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, phone (502) 429-7280, fax (502) 429-7262.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ench T. Clark

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for filling the application form for licensure as a dentist with the Board of Dentistry and establishes the guidelines for the examination for licensure.

(b) The necessity of this administrative regulation: To establish the guidelines for filing the application for licensure as a dentist and to establish the guidelines for the examination for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 313.220 authorizes the Board of Dentistry to make regulations for its own conduct and procedure.

(d) How this administrative regulation currently assists or will
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assist in the effective administration of the statutes: The application for dental licensure provides information from applicants that is needed for the Board of Dentistry to review and license dentists.

(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: By updating the Application to Practice Dentistry form that is incorporated by reference.
(b) The necessity of the amendment to this administrative regulation: To update the application to practice dentistry form.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 313.220 authorizes the Board of Dentistry to make regulations for its own conduct and procedure.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Kentucky Board of Dentistry to have needed information from applicants for dental licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment would affect approximately 120 new applicants for dental licensure each year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by this implementation of the administrative regulation, if it is an amendment, including:
(a) List the actions of each of the regulated entities identified in question (3) that will have to take to comply with this administrative regulation or amendment.
(b) Do the additional questions on the application relating to National Board and regional clinical examinations and their status with the Kentucky Higher Education Assistance Authority apply?
(c) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? None.
(d) As a result of compliance, what benefits will accrue to the entities identified in question (3)?: Applicants for dental licensure will have to provide additional information on the application relating to National Board and regional clinical examinations and their status with the Kentucky Higher Education Assistance Authority.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None.
(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment to the regulation would not establish or increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because the same standards govern all persons within the appropriate section of the regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No.

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

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Eric T. Clark

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for filing the application for licensure as a dental hygienist with the Board of Dentistry and establishes the guidelines for the examination for licensure.

(b) The necessity of this administrative regulation: To establish the guidelines for filing the application for licensure as a dental hygienist and to establish the guidelines for the examination for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 313.220 authorizes the Board of Dentistry to make regulations for its own conduct and procedure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The application for licensure in dental hygiene provides information from applicants that are needed for the Board of Dentistry to review and license dental hygienists.

(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: By updating the Application to Practice Dental Hygiene form that is incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: To update the application to practice dental hygiene form.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 313.220 authorizes the Board of Dentistry to make regulations for its own conduct and procedure. KRS 313.270 authorizes the board to promulgate administrative regulations relating to the practice of dental hygiene. KRS 313.300 requires written applications to the board in order to practice dental hygiene.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Kentucky Board of Dentistry to have needed information from applicants for licensure in dental hygiene.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment would affect approximately 115 new applicants for dental hygiene licensure each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for dental hygiene licensure will have to complete additional questions on the application relating to National Board and regional clinical examinations and their status with the Kentucky Higher Education Assistance Authority.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for dental hygiene licensure will provide more up-to-date information for the board to evaluate their application.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment to the regulation would not establish or increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because the same standards govern all persons within the appropriate section of the regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement of a state or local government (including cities, counties, fire departments, or school districts)? No.

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much will it cost to administer this program for the first year?

(c) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure

(1) Fee for Settling for the State Medical Examination administered by the Board:

(2) [44] Fee for annual renewal or renewal of limited original license - $150 ($425)

(3) [2] Fee for initial renewal of regular license - $500 ($560)

(4) [39] Fee for renewal of limited license - eighty-five (85) dollars.

(5) [3] Fee for initial issuance of limited license - seventy-five (75) dollars.

(6) [2] Fee for initial issuance of limited license - seventy-five (75) dollars.

Section 1. Fee Schedule. (1) [44] Fee for annual renewal or renewal of regular license - $150 ($425).

(2) [44] Fee for annual renewal or renewal of limited license - eighty-five (85) dollars.

(3) [2] Fee for initial renewal of regular license - $500 ($560).

(4) [39] Fee for renewal of limited license - eighty-five (85) dollars.

(5) [3] Fee for initial issuance of limited license - seventy-five (75) dollars.

(6) [2] Fee for initial issuance of limited license - seventy-five (75) dollars.

(7) [44] Fee for annual renewal or renewal of limited license - eighty-five (85) dollars.

(8) [44] Fee for annual renewal or renewal of limited license - eighty-five (85) dollars.

(9) [44] Fee for annual renewal or renewal of limited license - eighty-five (85) dollars.

(10) [44] Fee for temporary permit (credited to fee for regular license if subsequently issued) - fifty (50) dollars.
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(10) [(41)] Fee for emergency permit - twenty-five (25) dollars.
(11) [(42)] Fee for duplicate license certificate - ten (10) dollars.
(12) Fee for use of paper renewal application - ten (10) dollars.
(13) Fee for copy of "Kentucky Medical Directory" - fifteen (15) dollars.
(14) Fee for one (1) year subscription to Newsletter (fee waived for licensees) - ten (10) dollars.
(15) [(46)] Fee for setting for competency examination administered by board - $275.
(16) [(47)] Fee for initial issuance of regular license for a graduate of a Kentucky medical school who remains in this state for postgraduate training - $150.
(17) [(47)] Fee for Federal Bureau of Investigation (FBI) Fingerprint Card - eighteen (18) dollars.
(18) [(48)] Fee for application for extension of time for completion of continuing education requirements - $100.
(19) Verification of licensure to licensing agency of another jurisdiction - ten (10) dollars.

DANNY M. CLARK M.D., President
APPROVED BY AGENCY: August 4, 2006
FILED WITH AGENCY: August 10, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006 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 this agency in writing by September 22, 2006. A list of persons who have indicated 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 this public hearing, you may submit comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. 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, II

(1) Provide a brief summary of:
(a) What the proposed administrative regulation does: This amendment will increase the fee for initial license applications, renewal applications, reregistration applications, establish a processing fee for the use of paper renewal applications, and establish a fee for verification of licensure to licensing agency of another jurisdiction.
(b) The necessity of this administrative regulation: Increases fee for initial applications, renewal applications and reregistration applications. Establishes additional fee for use of paper renewal application and establishes a fee for verification of licensure to licensing agency of another jurisdiction.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment meets statutory requirements by setting forth necessary increases in fees.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This amendment increases the fee for initial license applications, renewal applications, reregistration applications, establishes a fee for the use of paper renewal applications and establishes a fee for verification of licensure to licensing agency of another jurisdiction.
(2) If this is an amendment to an existing regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment increases the fee for initial license applications, renewal applications, reregistration applications, establishes a processing fee for the use of paper renewal applications and establishes a fee for verification of licensure to licensing agency of another jurisdiction.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase fees for initial license applications, renewal applications, reregistration applications, establish a processing fee for the use of paper renewal applications and establish a fee for verification of licensure to licensing agency of another jurisdiction.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment meets statutory requirements by setting forth necessary increases in fees.
(d) How the amendment will assist in the effective administration of the statutes. This amendment increases the fee for initial license applications, renewal applications, reregistration applications, establishes a fee for the use of paper renewal applications and establishes a fee for verification of licensure to licensing agency of another jurisdiction.
(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 and approximately 13,000 physicians and osteopaths currently licensed in the Commonwealth of Kentucky.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No initial action. Will be included with initial application, renewal application and reregistration application.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Initial application fee will be increased to $300. Annual renewal of regular license will be increased to $150. Reregistration of inactive license will be increased to $250. A charge of $10 will be assessed for processing a paper renewal application. A charge of $10 will be assessed for verification of licensure to licensing agency of another jurisdiction.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will benefit because the Board will be able to provide more efficient services to the entities identified above.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Funding comes directly from applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The applicant will be responsible for the fee.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will increase the fee for an initial application, renewal application, reregistration application, will establish a fee for a paper renewal application and will establish a fee for verification of licensure to licensing agency of another jurisdiction.
(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
State Board of Licensure for Professional Engineers and Land Surveyors
(Submission)

RELATES TO: KRS 322.270
STATUTORY AUTHORITY: KRS 322.270
NECESSITY, FUNCTION, AND CONFORMITY. KRS 322.270

201 KAR 18:170. Compensation of board members.

- 854 -
states that "when attending to the work of the board, each member shall receive compensation as established by regulation of the board and approved by the appropriate legislative body."

Section 1. Each member of the board shall receive $200 ($100) per day when actually attending to the work of the board or any of its committees.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2006 at 2:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. 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 in writing. 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets the compensation of board members.
(b) The necessity of this administrative regulation: KRS 322.270 requires that board members be compensated.
(c) How this administrative regulation conforms to the content of the enabling statute: The regulation sets the compensation rate for board members.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets the compensation rate so board members can be paid as required by KRS 322.270.
(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 increases the compensation of board members from $100 per day to $200 per day. This will be the first increase in compensation since 1988.
(b) The necessity of the amendment to this administrative regulation: In order to increase the board member compensation, this regulation must be amended.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 322.270 since that statute requires that the compensation of board members be established by regulation.
(d) How the amendment will assist in the effective administration of the statutes: This amendment sets the compensation rate so board members can be paid as required by KRS 322.270.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will not affect any individuals, businesses, organizations, or governmental units other than the board itself. The board has adequate restricted funds to pay the additional cost of the amendment with no increase of any fees.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The board will pay its members the increased amount.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be $200 per board member per day when actually attending to the work of the board or any of its committees, or an increase of $100 over the present amount. The board has adequate restricted funds to pay the additional cost of the amendment with no increase of any fees.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The increased pay is more appropriate compensation for the time spent by the board members while attending to the work of the board or any of its committees, and will help encourage more active participation on board matters by members of the board.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) Or a continuing basis: $40,000 per year.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established.
(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.
3. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. 201 KAR 18:170; KRS 322.270.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. Initially, none but an increased cost to the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors of $40,000 per year to be paid from Restricted Agency Funds.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? None
(d) How much will it cost to administer this program for subsequent years? $40,000 per year to be paid from Restricted Agency Funds.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
GENERAL GOVERNMENT
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(Amendment)


RELATES TO: KRS 322.290(4)
STATUTORY AUTHORITY: KRS 322.290(4), (14)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(14) requires the board to adopt a program of continuing education for professional land surveyors. This administrative regulation implements the continuing professional development program mandated by KRS 322.290(14) for professional land surveyors.

Section 1. Definitions. (1) "Completion" means the professional land surveyor has satisfactorily met specific requirements of an offering (e.g., passing a university course or attending a seminar).
(2) "Continuing professional development" (CPD) means participation in activities, beyond the basic educational requirements, that provide specific content planned and evaluated to improve the land surveyor's professional competence and:
(a) Encourage acquisition of new skills and knowledge required to maintain competence; and
(b) Strengthen the professional land surveyor's critical inquiry and balanced judgment; and
(c) Raise the ethical standards within the professional community; and
(d) Which meet the requirements established by the provisions of this administrative regulation.

(3) "CPDC" ['CPDC'] means the Continuing Professional Development Committee.

(4) "Professional development hour" (PDH) means not less than fifty (50) minutes of instruction or presentation that meets the requirements of this administrative regulation.

(5) "Provider" means a person, school, association, company, corporation or group who has developed a CPD activity. The provider or its designated representative must participate directly in the presentation.

(6) "Reporting period" means the two (2) calendar year period immediately before the professional land surveyor's license renewal.

(7) "Sponsor" means a group, such as a professional society, offering activities by providers.

Section 2. Continuing Professional Development Committee

(1) The chair of the State Board of Licensure for Professional Engineers and Land Surveyors shall appoint a Continuing Professional Development Committee and name its chair at the first regularly scheduled meeting of the board every calendar year.

(2) The CPDC shall consist of at least four (4) board members of which at least two (2) are professional land surveyors. In addition, the Kentucky Association of Professional Surveyors and the Kentucky Society of Professional Engineers shall each appoint one (1) nonvoting member (members of the Kentucky Association of Professional Surveyors. The CPDC shall include at least two (2) members of the board who are professional land surveyors.

(3) Work of the CPDC shall be considered work of the board and compensation shall be as provided by KRS 322.270.

(4) The CPDC shall hold regular meetings and a record of its action shall be maintained.

(5) The CPDC shall have the authority to rule on all matters concerning continuing professional development for professional land surveyors. Decisions of the CPDC shall be ratified by the board. Anyone who disagrees with a decision of the CPDC may direct his concerns to the board for consideration at the board's next meeting.

Section 3. Program Structure. (1) Except as provided otherwise in this administrative regulation, a professional land surveyor shall complete and report to the board a minimum of eight (8) professional development hours for each calendar year.

(2) The eight (8) professional development hours shall include a four (4) hour board sponsored course in standards of practice for professional land surveyors, professional ethics, and the code of professional practice and conduct, taken once before the end of four (4) calendar years from previous attendance.
(a) A course in professional ethics which shall be:
- Approved by the CPDC as meeting the ethics requirement,
- Taken in accordance with Section 4 of this administrative regulation,
- Taken once before the end of four (4) calendar years from previous attendance.
(b) A course in standards of practice for professional land surveyors which shall be:
- Approved by the board,
- Taken in accordance with Section 4 of this administrative regulation,
- Taken once before the end of four (4) calendar years from previous attendance.

(3) [30] A maximum of four (4) hours in excess of the eight (8) professional development hours required to be earned in a calendar year may be carried forward to the next calendar year.

(4) [30] Failure to earn the eight (8) professional development hours shall constitute unprofessional conduct.

Section 4. Criteria for Professional Development. (1) Professional development hours may be earned by successful completion of the following activities subject to approval by the CPDC and board:
(a) College or university courses;
(b) Seminars;
(c) Tutorials;
(d) In-house programs sponsored by corporations or other organizations;
(e) Correspondence courses;
(f) Televised or videotaped courses with approved supervision;
(g) Distance learning courses with approved supervision;
(h) Teaching or instructing courses, programs, or items specified in this subsection. The credit may be claimed at twice the number of hours permitted participants;
(i) Making or attending approved presentations at technical or professional meetings; or
(j) Publication of papers, articles, or books related to the practice of land surveying.

(2) Activities described in subsection (1) of this section shall:
(a) Be relevant to the practice of land surveying;
(b) Contain technical, ethical, or managerial subjects;
(c) Be an organized program of learning, presented sequentially;
(d) Be conducted by individuals with education, training, or expertise acceptable to the CPDC;
(e) Be offered for the number of professional development hours approved by the CPDC; and
(f) Not include in-service training, orientation to specific institutional policies and practices, or time used to sell or advertise a product.

(3) CPD activities shall earn credit only when substantially different from a course for which credit was granted in the previous two (2) calendar years.

(4) Professional development hours shall be converted as follows:
(a) One (1) university semester hour shall equal fifteen (15) professional development hours.
(b) One (1) university quarter hour shall equal ten (10) professional development hours.
(c) One (1) continuing education unit shall equal ten (10) professional development hours.

(5) Unless stated otherwise in this administrative regulation, credit for courses shall be earned at the rate of one (1) professional development hour for each hour of instruction completed, if approved by the CPDC.

Section 5. Approval of a Continuing Professional Development Activity. Activity approvals may be granted for sponsors, providers, or individual professional land surveyors as follows:
(1) Approval of activities is valid for a specified approval period or until alteration of the activity is approved by the CPDC.

(2) Failure to notify the CPDC of a change in an activity may render approval of the activity null and void.

(3) Prior to approval, an activity shall not be advertised as approved for Kentucky professional land surveyors without a conspicuous notice that the activity has been "submitted for consideration."

(4) If prior approval is desired, a written request for approval of the activity shall be submitted to the CPDC on "Continuing Professional Development Course Approval Form" at least sixty (60) days prior to presentation of the activity. All other requests for approval of an activity shall be submitted to the CPDC on a "Continuing Professional Development Course Approval Form" at least two (2) weeks before the CPDC meeting which considers the activity for approval.

(5) All requests for approval of an activity shall be accompanied by:
   (a) A detailed outline and objectives;
   (b) A time outline including registration, introductions, welcoming breaks, and meals;
   (c) Handouts or reference materials needed to evaluate the activity; and
   (d) A resume for each instructor or speaker in the activity.

(6) The CPDC or board reserves the right to send a representative to monitor an activity.

(7) Approval for the activity may be withdrawn for subsequent iterations of the activity, if significant variation is observed from the approved activity.

(8) An evaluation form shall be made available for participants at each presentation.

(9) An individual under disciplinary action from the board or a business entity with a principal who is under disciplinary action from the board is prohibited from being granted a CPD activity for credit without specific approval from the board.

(10) When a provider fails to obtain prior approval, a professional land surveyor may require credit for an activity by making a written request to the CPDC and including the items listed in subsection (5) of this section.

(11) Upon approval, an activity will receive a CPD number which shall be used to identify the activity.

(12) If an activity is not approved by the CPDC, the requestor shall be sent notice of nonapproval within two (2) weeks of its decision. This decision shall be presented to the board at its next meeting for ratification.

Section 6. Exemptions and Extensions. The following professional land surveyors may be exempted from the requirements of this administrative regulation by submitting a written request to the CPDC with supporting documentation for the exemption:

(1) A professional land surveyor shall be exempt for the calendar year in which he is initially licensed by the board.

(2) A professional land surveyor who cannot satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may be exempted for the calendar year in which the disability, illness, or extenuating circumstance occurs. The CPDC may grant an extension of time to fulfill the yearly CPD requirement for an extenuating circumstance.

(3) An exemption or extension request shall be made in writing for each calendar year and the exemption or extension is only valid for that calendar year.

Section 7. Reinstatement. Before a license is reinstated by the board, a professional land surveyor shall earn the continuing professional development hours required for each year his license was revoked, suspended, or expired, up to a maximum of thirty-two (32) professional development hours.

Section 8. Reporting. (1) On the biennial renewal form, a professional land surveyor shall certify whether or not the requirements of this administrative regulation have been met.

(2) Biennial renewal forms received after September 1 shall be subject to the audit process in Section 9 of this administrative regulation. By January 15 following each reporting year, every professional land surveyor shall report, in writing to the board, the CPD programs attended and the corresponding professional development hours earned. This report shall be certified and signed by the professional land surveyor. Reports filed after January 15 shall be accompanied by a $100 late fee and shall be subject to an audit.

Section 9. Audits. (1) Compliance with the annual CPD requirement shall be determined through an audit process. Professional land surveyors shall be audited through a random selection process or as the result of information provided to the board. Individuals selected for audit shall provide the board with documentation of the CPD activities claimed for the renewal period. Appropriate documentation shall include:

(a) Verification records in the form of transcripts, completion certificates, or other documents supporting evidence of participation.

(b) Information regarding seminar or course content, instructors, and sponsoring organizations.

(2) Verification records and documentation for audit purposes shall be maintained by individual licensees for a period of three (3) years after completion of the CPD activity.

(3) If the board disallows continuing professional development credit is disallowed, pursuant to an audit, a professional land surveyor shall have 180 calendar days after notification to substantiate the original claim or earn other credit to meet the requirement. Before June 1 following the reporting period:

(a) Substantiate the disallowed continuing professional development credit.

(b) Earn sufficient hours to meet the CPD requirement.

(4) Failure to comply with the CPD requirements shall be considered a violation of KRS 322.180(3) subjecting the professional land surveyor to disciplinary action.

(5) Determination of noncompliance shall subject the professional land surveyor to an automatic audit of the next reporting period and each subsequent reporting period until an audit results in a determination of compliance.

(6) A professional land surveyor who is under investigation pursuant to KRS 322.180 may be subjected to the audit requirements of this section (result in non-renewal of the professional land surveyor's license without a hearing).

Section 10. Incorporation by Reference. (1) "Continuing Professional Development Course Approval Form", (November, 1999), State Board of Licensure for Professional Engineers and Land Surveyors is incorporated by reference.

(2) This material [â©] may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on September 21, 2006 at 1:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing five weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the pro-
posed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation implements the continuing professional development program mandated by KRS 322.290(14) for professional land surveyors.

(b) The necessity of this administrative regulation: KRS 322.290(14) mandates a professional development program for professional land surveyors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation contains the details and requirements of the mandated professional development program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation satisfies the requirements of the continuing professional development program for professional land surveyors so that the board can administer the program and inform licensees of the requirements.

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

(a) How the amendment will change the existing administrative regulation: This amendment contains two major changes. First, it combines the 2 previous required courses in standards of practice and ethics into one course, which will be more convenient for the licensees. Second, it changes the reporting method. Under the current language, a licensee would report continuing professional development courses on a specific form every 2 years and face a $100 penalty for filing late. The amendment would do away with the form and have the licensee certify on the biennial renewal form whether or not the licensee has completed the continuing professional development requirements. The amendment also details the random audit procedures associated with the reporting in order to ensure compliance.

(b) The necessity of the amendment to this administrative regulation: In order to amend the language related to the required courses so that the courses can be combined into one course and to change language in order to adopt a more efficient reporting method which will save labor costs for the board and reduce licensee administrative time required of each professional land surveyor.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 322.290(14) since that statute requires a professional development program for professional land surveyors.

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets the requirements of the professional development program and provides the supporting regulatory language for the board to enforce the requirement of KRS 322.290(14)

(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 1,300 licensed professional land surveyors and the board itself.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This amendment will result in less time required of the licensees in reporting their professional development activity and has combined 2 required courses into one, further reducing their burden of compliance.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No additional actions will be required of either the licensees or the board. The burden is on both the licensees and the board regarding compliance with the CPD requirements is eased by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 201 KAR 18:192; KRS 322.290(14).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. There will be no additional revenue or expenditure to any agency as a result of this amendment.

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

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

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

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

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

- Revenues (+/-):

- Expenditures (+/-):

- Other Explanation: There is no additional cost or revenue generated by this amendment.
GENERAL GOVERNMENT CABINET
Board of Nursing
(AMENDMENT)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 214.615, 314.041(1), (2), 314.051(3), 314.470

STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:

(a) Submit:
1. A properly executed application for licensure, as required by 201 KAR 20:370, Section 1(1);
2. The licensure application fee as established in 201 KAR 20:240;
3. A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;
4. A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
5. A letter of explanation that addresses each conviction;
(b) Notify the board as soon as a new address is established after submitting the application;
(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;
(d) When taking the examination, abide by and cooperate with security procedures adopted by the board;
(e) Apply to take and pass the National Council Licensure Examination; and
(f) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615.

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the applicant fails the examination, whichever comes first.

(3) The name of the applicant shall appear on the *Certified List of Kentucky Program of Nursing Graduates* as established in 201 KAR 20:260, the *Certified List of Out-of-state Program of Nursing Graduates*, or the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements. The *Certified List of Out-of-state Program of Nursing Graduates* shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:

(1) The candidate;
(2) Other state boards of nursing;
(3) The National Council of State Boards of Nursing, Inc.;
(4) The candidate's program of nursing; and
(5) An individual or agency who submits an applicant's or licensee's written authorization for their release.

Section 4. Clinical Internship. This section shall apply to applicants beginning January 1, 2006. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met.

(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1(1) and (4) are met.

(3) To be eligible for a clinical internship, the applicant shall hold a current provisional license.

(4) A provisional license shall expire six (6) months from the date of issuance by the board and shall not be reissued unless the provisions of subsection (3) of this section apply.

(5) A person with a temporary physical or mental inability to complete the clinical internship shall:
(a) Complete the "Petition to Hold Provisional License in Abeyance";
and
(b) Submit evidence from a licensed health care practitioner that documents a diagnosis of a temporary physical or mental inability to complete the internship within the original six (6) months.

(a) If the Petition to Hold Provisional License in Abeyance is granted, the current provisional license shall be void and shall be immediately returned to the board.

(b) The person whose petition has been granted shall not engage in nursing practice.

(7)(a)1. A person whose petition has been granted shall submit a written request to the board to release the provisional license with the temporary physical or mental inability has been resolved:
2. The request shall include the name, address, telephone number, date of birth, and Social Security number of the person;
3. The request shall also include written verification from a licensed health care practitioner that the temporary physical or mental inability has been resolved.

1. The person shall also submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System, if the previous one (1) is more than six (6) months old.

(b) Upon submission of the required documentation and approval by the board, the board shall release the provisional license for six (6) months.

(c) If the required documentation is submitted more than one (1) year from the date of the initial application for licensure, the person shall meet the requirements of Section 1 of this administrative regulation.

(b) Documentation of completion of the clinical internship shall be submitted to the board in writing or electronically. It shall include the following:
(a) Name, address, telephone number, social security number and date of birth of the applicant;
(b) Provisional license number;
(c) Name, address and telephone number of the facility where the clinical internship was completed;
and
(d) Name of the supervising nurse.

(9) To qualify as "direct supervision" under KRS 314.041(5) and 314.051(5), the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to the applicant while the applicant is engaged in the clinical internship.

(10) The nurse responsible for the applicant shall be currently licensed to practice as a nurse in Kentucky.

(a) Except as provided in subsections (b) and (c) of this section, the applicant shall successfully complete the clinical internship prior to taking the examination. The board shall not authorize the applicant to take the examination until verification of completion of the clinical internship is filed with the board.
(b) A graduate of a foreign nursing school who complies with 201 KAR 20:480, Section 1(4)(b) shall be authorized to complete
the clinical internship after passing the NCLEX.
(c) An applicant who has failed the NCLEX as a result of an
application for licensure in a jurisdiction other than Kentucky shall
take and pass the examination before completing the clinical
internship.
(12) If the applicant fails the examination, the provisional li-
ense shall be void and shall be immediately returned to the board.
Section 5. Practical Nurse Role Delineation Course. (1) A
graduate of a board-approved registered nurse program who is
unsuccesful on the National Council Licensure Examination for
registered nurses may apply for licensure by examination as a
licensed practical nurse pursuant to KRS 314.041(13).
(12a) Prior to making application for licensure as a practical
nurse, the applicant seeking practical nurse licensure pursuant to
KRS 314.041(13) shall complete a board-approved practical nurs-
ing role delineation course.
(b) The applicant shall return the registered nurse provisional
license, if applicable.
(3) The course shall be taken only at an approved LPN pro-
gram of nursing. The program of nursing shall seek approval of the
course from the board.
(4) The course shall consist of at least eight (8) hours of didac-
tic instruction and sixteen (16) hours of clinical instruction.
(5) At the conclusion of the course, the individual shall be able
to make decisions and take actions that are consistent with the
scope and standards of practical nursing practice, established
policies, procedures, and licensing laws.
(6) The LPN program of nursing shall submit to the board a
certified list of individuals who completed the course.
(7) After completion of the practical nurse role delineation
course, the applicant shall comply with Section 1 of this adminis-
trative regulation.
Section 6. Nurse Licensure Compact Provisions. (1) An appli-
cant who is issued a license and who does not have permanent
residency in Kentucky shall be issued a license that indicates on
the license that it is only valid in Kentucky.
(2) The board may request that an applicant provide evidence
of his state of residence.
Section 7. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
(a) "Certified List of Kentucky Program of Nursing Graduates",
(2/06), Kentucky Board of Nursing;
(b) "Petition to Hold Provisional License in Abeyance," (8/04),
Kentucky Board of Nursing; and
(c) "Certified List of Out of State Program of Nursing Gradu-
ates", (2/06), Kentucky Board of Nursing.
(2) This material may be inspected, copied, or obtained, sub-
ject 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.

SUSAN DAVIS, President
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
September 25, 2006, 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 September 18, 2006, five workdays
prior to the hearing, of their intent to attend. If no notification of
intent to attend the hearing is received by that date, the hearing
may be canceled. This hearing is open to the public. Any person
who wishes to be heard will be given an opportunity to comment on
the proposed administrative regulation. A transcript of the public
hearing will not be made unless a written request for a transcript is
made. If you do not wish to be heard at the public hearing, you
may submit written comments on the proposed administrative
regulation. Written comments shall be accepted until close of busi-
ness October 2, 2006. Send written notification of intent to be
heard at the public hearing or written comments on the proposed
administrative regulation to the contact person.
CONTACT PERSON: Nathan Goldman, General Counsel,
Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,
Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 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:
(a) What this administrative regulation does: It sets require-
ments for licensure by examination as a nurse in Kentucky.
(b) The necessity of this administrative regulation: KRS Chap-
ter 314 requires the board to set requirements.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: By setting requirements.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: By setting
requirements for licensure by examination.
(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: It implements the provisions of HB 102 (2006), the
Nurse Licensure Compact. It provides that an applicant who is not
a resident of Kentucky will be issued a license that is only valid in
Kentucky.
(b) The necessity of the amendment to this administrative regu-
lation: The Nurse Licensure Compact, HB 102, is based on
residency. A nonresident applicant would be issued a license that is
valid only in Kentucky and cannot be used in another compact
state.
(c) How the amendment conforms to the content of the
authorizing statutes: By implementing the appropriate provisions
of the Nurse Licensure Compact.
(d) How the amendment will assist in the effective administra-
tion of the statutes: By implementing the appropriate provisions
of the Nurse Licensure Compact.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: Nonresident applicants for licensure by exami-
nation, number unknown.
(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this adminis-
trative regulation, if new, or by the change, if it is an amendment,
Including:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative
regulation or amendment: They may be asked to provide evidence
of residency.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): There will be no additional cost.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): They will be issued the appro-
apropriate Kentucky nursing license.
(5) Provide an estimate of how much it will cost the administra-
tive body 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 imple-
mentation and enforcement of this administrative regulation:
Agency funds.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: No increase
will be necessary.
(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: It does
not.
(9) TIERING: Is tiering applied? Tiering was not applied as the
changes apply to all equally.
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The board of nursing.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 102 (2006)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue as a result of the amendment.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue as a result of the amendment.
5. How much will it cost to administer this program for the first year? No additional cost.
   (d) How much will it cost to administer this program for subsequent years? No additional cost.
   Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:  

GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)  

201 KAR 20:110. Licensure by endorsement.  

RELATES TO: KRS 194A.540, 314.031(4), 314.041(7), 314.051(8), 314.101(4), 314.103, 314.470  
STATUTORY AUTHORITY: KRS 314.041(7), 314.051(8), 314.131(1)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.103, inclusive. KRS 314.051(8) authorizes the Board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. KRS 314 101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by endorsement. The administrative regulation establishes the requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:
   (a) Have completed a state approved program of nursing equivalent to Kentucky requirements; or
   (b) Have completed that portion of a state-approved program of nursing that would be equivalent to a Kentucky program of nursing;
   (c) Have taken and passed the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 4 of this administrative regulation;
   (d) Complete the application form, as required by 201 KAR 20:370, Section 1(1);
   (e) Submit the current fee for a licensure application, as established by 201 KAR 20:240;  
   (f) Submit a copy of the court record of each misdemeanor or felony conviction that addresses each conviction as required by 201 KAR 20:370, Section 1(3);  
   (g) Request the U.S. jurisdiction or territory or foreign country of initial licensure to submit a verification of licensure by examination to the board which shall include the following information:
      1a. Name of the program of nursing completed and date of graduation, or
      b. Name of the program of nursing attended and date of completion of the requirements for eligibility to take the licensure examination in that jurisdiction; and
   2. A statement that the applicant's license has not been revoked, suspended, limited, probated or otherwise disciplined by the licensing authority and is not subject to disciplinary action;
   (h) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615;
   (i) Submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI; and
   (j) Submit evidence of completion of the clinical internship as required by KRS 314.041, 314.051, and Section 5 of this administrative regulation, if applicable
   (2) An application shall be valid for a period of six (6) months, except as provided for in Section 5 of this administrative regulation. The applicant shall:
      (a) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed; and
      (b) Notify the board in writing as soon as a new address is established after submitting the application.
   (3) After six (6) months, the applicant shall:
      (a) Submit a new application;
      (b) Submit the current licensure application fee; and
      (c) Meet the requirements established in this section.
   (4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

Section 2. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fourteen (14) contact hours in continuing education for each year since the last year in which the applicant can demonstrate at least 100 hours of practice, with a minimum of twenty-eight contact hours of continuing education.
   (2) The requirement established in subsection (1) of this section shall not apply to an applicant who:
      (a) Has been licensed for less than five (5) years from the date of initial licensure; or
      (b) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; or
      (c) Has not been engaged in nursing practice during the five (5) years preceding the date of the application. This applicant shall:
         1. Complete a refresher course approved by the board, pursuant to 201 KAR 20:380. The refresher course shall have been completed within two (2) years of the date of the application;
         2. Complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.
      (3) At least twenty-eight (28) contact hours shall have been earned within the twenty-four (24) months preceding the date of application for active Kentucky licensure status
      (4) Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (2) and (3) of this section.

Section 3. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets the requirements of Section 1(1)(a) through (f) and (i) of this administrative regulation shall be issued a temporary work permit.
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(2) A temporary work permit shall be valid for a period not to exceed six (6) months.

(3) An individual who practices as a nurse in this state without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and subject to the penalties listed in KRS 314.091 and 314.991.

Section 4. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or the National Council Licensure Examination shall provide evidence to the board that the examination met the following standards of equivalency:

(1) Accepted psychometric procedures are used in the development of the examination;

(2) The examination is available to the board in the English language;

(3) The examination test plan blueprint is available for board review and adequately identifies test content and content weighting;

(4) Test items are available for board review and demonstrate the testing of competency necessary for safe practice;

(5) At least one (1) of the reliability estimates for the examination is 0.80 or higher;

(6) The examination is revised after each administration to insure currency and security of content; and

(7) The examination is given under strict security measures.

Section 5. Clinical Internship. This section shall apply to applicants beginning January 1, 2006, as required by KRS 314.041(7) or 314.051(8).

(1)(a) An applicant shall request a provisional license by completing the application for Licensure required by Section 1 of this administrative regulation

(b) The provisional license shall be issued when the applicant meets the requirements of Section 1(1)(a), (b), (d) through (h), and (k) of this administrative regulation.

(2) To be eligible for a clinical internship, the applicant shall hold a current provisional license.

(3) A provisional license shall expire six (6) months from the date of issuance by the board and shall not be reissued unless the provisions of subsection (4) of this section apply.

(4) A person with a temporary physical or mental inability to complete the clinical internship shall:

(a) Complete the "Petition To Hold Provisional License in Abeyance"; and

(b) Submit evidence from a licensed health care practitioner that documents a diagnosis of a temporary physical or mental inability to complete the internship within the original six (6) months.

(5)(a) If the "Petition To Hold Provisional License in Abeyance" is granted, the current provisional license shall be void and shall be immediately returned to the board.

(b) The person whose petition has been granted shall not engage in nursing practice.

(6)(a). A person whose petition has been granted shall submit a written request to the board to renew the provisional license when the temporary physical or mental inability has been resolved.

2. The request shall include the name, address, telephone number, date of birth, and Social Security number of the person.

3. The request shall also include written verification from a licensed health care practitioner that the temporary physical or mental inability has been resolved.

4. Upon submission of the required documentation and approval by the board, the board shall issue the provisional license for six (6) months.

(c) If the required documentation is submitted more than six (6) months from the date of the initial application for licensure, the person shall meet the requirements of Section 1 of this administrative regulation.

(d) Documentation of completion of the clinical internship shall be submitted to the board in writing or electronically. It shall include the following:

(a) Name, address, telephone number, Social Security number and date of birth of the applicant;

(b) Provisional license number;

(c) Name, address and telephone number of the facility where the clinical internship was completed; and

(d) Name of the supervising nurse.

(8) To qualify as "direct supervision" under KRS 314.061(5) and 314.061(6), the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to the applicant while the applicant is engaged in the clinical internship.

(9) The nurse responsible for the applicant shall be currently licensed to practice as a nurse in Kentucky.

Section 6. Applicants for LPN license pursuant to KRS 314.041(14). An applicant for an LPN license pursuant to KRS 314.041(14) shall meet the requirements of this administrative regulation.

Section 7. Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may require that an applicant provide evidence of his state of residence.

Section 8. Incorporation by Reference. (1) "Petition to Hold Provisional License in Abeyance", (B)(4), Kentucky Board of Nursing, 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. .

SUSAN DAVIS, President
APPROVED BY AGENCY: August 10, 2006.
FILED WITH LRC: August 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2006, 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 September 18, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3956, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets requirements for licensure by endorsement as a nurse in Kentucky.

(b) The necessity of this administrative regulation: KRS Chapter 314 requires the board to set requirements.

(c) How this administrative regulation conforms to the intent of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements for licensure by endorsement.

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

(a) How the amendment will change this existing administrative regulation.

- 862 -
regulation: It implements the provisions of HB 102 (2006), the Nurse Licensure Compact. It provides that an applicant who is not a resident of Kentucky will be issued a license that is only valid in Kentucky.

(b) The necessity of the amendment to this administrative regulation: The Nurse Licensure Compact, HB 102, is based on residency. A non-resident applicant would be issued a license that is only valid in Kentucky and cannot be used in another compact state.

(c) How the amendment conforms to the content of the authorizing statutes: By implementing the appropriate provisions of the Nurse Licensure Compact.

(d) How the amendment will assist in the effective administration of the statutes: By implementing the appropriate provisions of the Nurse Licensure Compact.

(e) (List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nonresident applicants for licensure by endorsement, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) have to take to comply with this administrative regulation or amendment: They may be asked to provide evidence of residency.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be issued the appropriate Kentucky nursing license.

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

(a) Initially: No additional cost.

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

(h) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: HB 102 (2006)

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue as a result of the amendment.

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

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Revenues (+/-): Expenditures (+/-): Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

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

RELATES TO: KRS 314.011(13), 314.031, 314.071(4), 314.081, 314.470, 314.591(3)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.191(1) establishes the standards for disciplinary action to be taken by the board for practices which violate the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for the investigation and disposition of complaints received by the board.

Section 1. Receipt of Complaints. (1) The board shall receive and process each complaint made against any licensee, holder of a multistate licensure privilege pursuant to KRS 314.470, applicant or licensed individual if the complaint alleges acts which may be in violation of the provisions of KRS Chapter 314.

(2) All complaints shall be in writing and shall be dated and fully identify the individual (complainant) by name and address. The president of the board or the executive director or his designee may file a complaint based upon information received by oral, telephone or written communications if the facts of the complaint are determined to be accurate and indicate acts which may be in violation of the provisions of KRS Chapter 314.

(3) A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid complaint.

(4) Complaints shall be investigated. The staff may request an informal conference with the individual against whom the complaint has been made.

(5) Complaints shall be evaluated to determine if an apparent violation of the provisions of KRS Chapter 314 has been committed. The credentials review panel, the executive director or his designee shall make the determination as to the disposition of the complaint pursuant to Section 2 of this administrative regulation.

(6) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public, except as provided by KRS 314.470. 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) The complaint may be filed away if there is a determination that there is insufficient evidence of a violation or that a violation has not occurred.

(b) The complaint may be referred to the credentials review panel of the board by the executive director or his designee for disposition pursuant to this section or for issuance of a letter of concern for violation or:

(a) It may be determined that there is probable cause that a violation of KRS 314.091 has occurred. In cases involving practice as a nurse on the privilege pursuant to KRS 314.470, the case may be referred to the home state.

(2) Upon determination that there is probable cause that a
violation of KRS 314.091 has occurred, the complaint shall be
handled as follows:
(a) An administrative hearing may be scheduled pursuant to
subsection (3) of this section; or
(b) An agreed order may be offered pursuant to subsection (4)
of this section; or
(c) A consent decree may be offered, pursuant to subsection
(5) of this section.
(3) Administrative hearings.
(a) Hearings shall be held pursuant to KRS 314.091, KRS
Chapter 13B, and 201 KAR 20.162.
(b) Notice of the hearing and charges shall be mailed by certi-
fied mail to the address of the licensee or applicant on file with
the board pursuant to KRS 314.107.
(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 Individual
[applicant or licensee] for denial revocation, voluntary surrender,
suspension, probation, reinstatement, limitation of license or re-
appointment, and to impose a civil penalty. The terms of the agreement
may include other concourses or requirements to be met by the
Individual [applicant or licensee], including those listed in Section 4 of
this administrative regulation.
(b) The agreed order may contain terms which assure protec-
tion of public health and safety, or which serve to educate or reha-
bilitate the Individual [applicant or licensee].
(c) The agreed order when approved by the board shall termi-
nate the investigation of a specific complaint.
If the agreed order is not approved by the board, charges
may be brought pursuant to KRS 314.091 and the matter resolved
as directed therein.
(5) Consent decree.
(a) If an Individual [applicant or licensee] agrees to waive his
right to a hearing [and there is no evidence of intentional violation of
the mandatory review provisions of KRS Chapter 314], the
board may issue a consent decree in accordance with the provi-
sions of KRS 314.991 to impose a civil penalty and other terms
and conditions as listed in Section 4 of this administrative regula-
tion against an Individual [applicant or licensee] who has:
1. Practiced as a nurse in the Commonwealth of Kentucky
without a temporary work permit, multistate license privilege
pursuant to KRS 314.470, or a current[saleable] license or prov-
sional license issued by the board prior to filing an application for
license.
2. Practiced as an advanced registered nurse practitioner in
the Commonwealth of Kentucky without current[saleable] regis-
tration 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 grant or by the appropriate
national organization or agency.
[Obtain a license or work permit on the basis of a check
for an application fee which was returned unpaid by the bank.
5. [6] Qualified for a consent decree to cure noncompliance with
continuing education requirements, as set forth in 201 KAR 20.215,
Section 3.
5. [6] Executed an affidavit of reasonable cause concerning
the AIDS education requirement and obtained the required educa-
tion after the expiration of the six (6) months.
6. Had a positive drug screen for a nonprescribed drug or illicit
substance and obtained a chemical dependency evaluation that
does not indicate a substance abuse diagnosis.
(b) The use of a consent decree shall be restricted to only
those individuals [applicant or licensee] 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 Individual [applicant or licensee] meets all requirements
for licensure or registration upon ratification of the consent decree
by the board [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.
(e) If the consent decree is not ratified by the board, charges
may be brought pursuant to KRS 314.091 and the matter resolved
as directed therein.
(f) Consent decrees which have been ratified by the board
shall not be reported to other state boards of nursing, the national
council of state boards of nursing or other organization, unless
required by law.
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, holder of a multistate licen-
sure privilege, or [limited] license or provisional license may include
the following:
1. Prohibiting the performance of specific nursing acts includ-
ing access to, responsibility for, or the administration of controlled
substances; administration of any medication; supervisory func-
tions; or any act which the Individual [licensee or applicant] cannot
safely perform.
2. Requiring the Individual [applicant or licensee] to have
continuous, direct, on-site supervision by a registered nurse, physician,
or dentist.
3. Specifying the individual's [applicant's or licensee's] prac-
tice setting.
4. Specifying the types of patients to whom the Individual
[applicant or licensee] may give nursing care.
5. Requiring the Individual [applicant or licensee] to notify the
board in writing of any change in name, address, or employment.
6. Requiring the Individual [applicant or licensee] to have his
employer submit to the board written reports of performance or
compliance with the requirements set by the board.
7. Requiring the Individual [applicant or licensee] to submit to
the board evidence of physical, chemical dependency, or mental
health evaluations, counseling, or treatment screens.
8. Meeting with representatives of the board.
9. Issuing the license or temporary work permit for a specific
period of time.
10. Requiring the Individual to notify the board in writing of any
criminal arrests, charges, or convictions.
(11) Other requirements as determined by the board.
[Section 5. A limited temporary work permit or limited license
may be issued to:
(1) An applicant or licensee who has been subjected to disci-
plinary action by the board pursuant to KRS 314.061; or
(2) An applicant or licensee who holds a license with restric-
tions or conditions in another jurisdiction as a result of disciplinary
action and has had action by the board pursuant to KRS 314.061.]
SUSAN DAVIS, President
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
September 26, 2006, 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 September 18, 2006, five workdays
prior to the hearing, of their intent to attend. If no notification of
intent to attend the hearing is received by that date, the hearing
may be canceled. This hearing is open to the public. Any person
who wishes to be heard will be given an opportunity to comment on
the proposed administrative regulation. A transcript of the public
hearing will not be made unless a written request for a transcript is
made. If you do not wish to be heard at the public hearing, you
may submit written comments on the proposed administrative
regulation. Written comments shall be accepted until close of busi-
ness October 2, 2006. Send written notification of Intent to be
heard at the public hearing or written comments on the proposed
administrative regulation to the contact person.
CONTACT PERSON: Nathan Goldman, General Counsel,
Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:
(a) What the administrative regulation does: It provides for procedures for investigating and disposing of disciplinary complaints against nurses.
(b) The necessity of this administrative regulation: KRS Chapter 314 requires the board to set these procedures.
(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting procedures.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting procedures for handling these cases.
(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 implements the provisions of House Bill 102 (2006), the Nurse Licensure Compact. It also updates certain provisions of the regulation.
(b) The necessity of the amendment to this administrative regulation: The Nurse Licensure Compact, House Bill 102, requires certain changes to be made to conform to the statutes.
(c) How the amendment conforms to the content of the authorizing statutes: By implementing the appropriate provisions of the Nurse Licensure Compact.
(d) How the amendment will assist in the effective administration of the statutes: By implementing the appropriate provisions of the Nurse Licensure Compact.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses practicing in Kentucky on a multistate privilege, number unknown.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if now, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Nurses practicing in Kentucky on a multistate privilege may be disciplined in Kentucky for violations of the law.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be provided with an appropriate procedure for handling complaints against them.
(5) Provide an estimate of how much it will cost the administrative body 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: 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 necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The board of nursing
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: HB 102 (2006)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue as a result of the amendment.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue as a result of the amendment.
(c) How much will it cost to administer this program for the first year? No additional cost.
(d) How much will it cost to administer this program for subsequent years? No additional cost.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111, 314.470
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. This administrative regulation establishes standards for faculty of programs of nursing which prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Faculty for Prelicensure Registered Nurse Programs. (1)(a) The faculty shall include a nurse administrator and shall include at least two (2) nurse faculty (one (1) of whom may also serve as nurse administrator) The faculty may include clinical instructors in the major areas of nursing practice. The faculty shall be adequate in number and composition to assess, plan, implement, and evaluate the program and its curriculum in relation to the stated purpose, philosophy, objectives, and number of students and classes admitted annually, and any additional extension, experimental, or continuing education programs conducted.
(b) The nurse administrator and all nurse faculty and clinical instructors shall be appointed by and be responsible to the governing institution of the program of nursing.
(2) The nurse administrator shall have the following qualifications:
(a) A minimum of a masters or higher degree in nursing if appointed after September 1, 1980.
(b) A minimum of five (5) years of nursing experience within the immediate past ten (10) years and experience in administration.
(c) Current license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky.
(3)(a) Newly appointed nurse faculty in a baccalaureate degree prelicensure registered nurse program shall hold:
1. A masters degree with a major in nursing; or
2. A baccalaureate degree with a major in nursing and a masters degree in a related field which includes a minimum of eighteen
VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

(18) graduate hours in nursing. The eighteen (18) graduate hours in
nursing may also be earned independently of the related mas-
ters degree.
(b) Nurse faculty in an associate degree prelicensure regis-
tered nurse program shall hold:
1. A masters degree with a major in nursing;
2. A baccalaureate degree with a major in nursing and a mas-
ters degree in a related field which includes a minimum of eighteen
(18) graduate hours in nursing. The eighteen (18) graduate hours in
nursing may also be earned independently of the related mas-
ters degree; or
3. A baccalaureate degree with a major in nursing, and the
nurse faculty member shall complete within five (5) years of hire a
masters degree commensurate with either subparagraph 1 or 2 of
this paragraph.
(c) The nurse faculty in all educational programs whose faculty
prepares students for licensure as registered nurses shall hold a
temporary work permit or a current license or privileges to practice
as a registered nurse in the Commonwealth of Kentucky.
(d) The nurse faculty in all educational programs whose faculty
prepares students for licensure as registered nurses shall have
experience in the clinical or functional area of responsibility with a
minimum of two (2) years experience as a registered nurse within
the immediate past five (5) years or successful completion of a
competency based reentry program acceptable to the board.
(e) The nurse faculty in all educational programs whose faculty
prepares students for licensure as registered nurses shall have
experience in the application of principles in teaching and learning

Section 2. Faculty for Prelicensure Practical Nurse Programs.
(a) The faculty shall include at least two (2) nurse faculty (one (1)
of whom may also serve as nurse administrator). The faculty may
include clinical instructors in the major areas of nursing practice.
The faculty shall be adequate in number and composition to as-
sess, plan, implement, and evaluate the program and its curriculum
in relation to the stated purpose, philosophy, objectives, and num-
er of students and classes admitted annually.
(b) The nurse administrator, the nurse faculty and the clinical
instructor shall be appointed and be responsible to the govern-
ing institution of the programs of nursing.
(2) The nurse administrator shall have the following qualifica-
tions:
(a) A baccalaureate degree or higher degree with a major in nursing if
appointed after January 1, 1980.
(b) A minimum of five (5) years of nursing experience within
the past ten (10) years with experience in administration.
(c) Current license, privileges, or temporary work permit to prac-
tice as a registered nurse in the Commonwealth of Kentucky.
(d) Nurse faculty employed after September 1, 1985 shall have
earned a minimum of a baccalaureate degree by January 1,
(e) Nurse faculty appointed after January 1, 1992 shall have
a minimum of a baccalaureate degree with a major in nursing.
(f) Nurse faculty shall hold a current license, privileges, or tem-
porary work permit to practice as a registered nurse in the Com-
monwealth of Kentucky.
(g) Nurse faculty shall have experience in the clinical or func-
tional area of responsibility with a minimum of two (2) years of
experience as a registered nurse within the immediate past five (5)
years or successful completion of a competency based reentry
program acceptable to the board.
(h) Nurse faculty shall have experience in the application of
principles in teaching and learning.

Section 3 Evaluation of Registered Nurse Program and Practi-
cal Nurse Program Faculty. (1) Evaluation of faculty records. The
nurse administrator shall submit to the board the qualifications of
nurse faculty and clinical instructors upon appointment.
(a) Official college transcripts or copies verified by the nurse
administrator or designee shall be available to the board upon
request.
(b) A complete and official record of qualifications and work-
load for each faculty member shall be on file and available to the
board upon request.
(2) Reevaluation of faculty records. The board shall review
annually the qualifications of the faculty employed in the program
of nursing. If standards are not met, the governing institution shall
be notified that a new student class may not be enrolled until stan-
dards are met. Further, the program of nursing may be subject to
conditional approval status in accordance with 201 KAR 20:280,
Section 2(2).

Section 4. Faculty Supervision of Student Clinical Practice. (1)
Effective September 1, 1993, The maximum ratio of students to a
nurse faculty member or clinical instructor in the clinical area shall
be ten (10) to one (1)
(2) The clinical instructor shall function under the guidance of
the nurse faculty responsible for a given course.
(3) The educational preparation of the clinical instructor shall at
least equal the level of the appointing program. Any exception shall
be justified to the board.

SUSAN DAVIS, President
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
September 25, 2006, in 8 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 September 18, 2006, five workdays
prior to the hearing, of their intent to attend. If no notification of
intent to attend the hearing is received by that date, the hearing
may be canceled. This hearing is open to the public. Any person
who wishes to be heard will be given an opportunity to comment on
the proposed administrative regulation. A transcript of the public
hearing will not be made unless a written request for a transcript is
made. If you do not wish to be heard at the public hearing, you
may submit written comments on the proposed administrative
regulation. Written comments shall be accepted until close of busi-
ness October 2, 2006. Send written notification of intent to be
heard at the public hearing or written comments on the proposed
administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel,
Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,
Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 566-
3938, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: It sets require-
ments for faculty of RN and LPN prelicensure programs of nursing.
(b) The necessity of the administrative regulation: KRS Chap-
ter 314 requires the Board to set these requirements.
(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 statute(s): By setting
requirements.
(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: It implements the provisions of HB 102 (2006), the
Nurse Licensure Compact. It would allow a nurse with a multistate
privilege to be a faculty member in Kentucky.
(b) The necessity of the amendment to this administrative regu-
lation: The Nurse Licensure Compact, HB 102, requires cer-
tain changes to be made to conform to the statutes.
(c) How the amendment conforms to the content of the
authorizing statute: By implementing the appropriate provisions of
the Nurse Licensure Compact.
(d) How the amendment will assist in the effective administra-
tion of the statute(s): By implementing the appropriate provisions of
the Nurse Licensure Compact.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administrative regulation: Nurses practicing in Kentucky on a multistate privilege, number unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Nurses practicing on a multistate privilege in Kentucky may be employed as faculty members.
(5) Provide an estimate of how much it will cost the administrative body 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: 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 necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The board of nursing.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 102 (2006)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue as a result of the amendment.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue as a result of the amendment.
   (c) How much will it cost to administer this program for the first year? No additional cost.
   (d) How much will it cost to administer this program for subsequent years? No additional cost.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
assault pursuant to KRS 216.8400(2); c. Principles and techniques of evidence identification, collection, evaluation, preservation and chain of custody; d. Assessment of injuries, including injuries of forensic significance; e. Physician consultation and referral; f. Medicolegal documentation; g. Victim's bill of rights, KRS 421.500 through 421.550; h. Crisis intervention; i. Dynamics of sexual assault; j. Testifying in court; k. Overview of the criminal justice system and related legal issues; l. Available community resources including rape crisis centers; m. Historical development of forensic nursing conceptual model; n. Cultural diversity and special populations; o. Ethics; p. Genital anatomy, normal variations and development stages; q. Health care implications and interventions; and r. Developing policies and procedures.

Teaching methods. The activities of both instructor and learner shall be specified in relation to content outline. These activities shall be congruent with stated course objectives and content, and reflect application of adult learning principles.

(f) Evaluation. There shall be clearly defined methods for evaluating the learner’s achievement of course outcomes. There shall also be a process for annual course evaluation by students, providers, faculty, and administration.

(g) Instructional or reference materials. All required instructional materials and reference materials shall be identified.

(4) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3. (1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date and site of the course; and (b) Participant roster, with a minimum of names, Social Security numbers and license numbers.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant; (b) Title of course, date and location; (c) Provider’s name; and (d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the “Application for Initial or Continued SANE Course Approval”.

(3) Continued approval shall be based on the past approval period performance and compliance with board standards.

Section 5. The board may deny, revoke or suspend the approval status of a SANE course for cause.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the following procedure shall be followed:

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board’s decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate license privilege pursuant to KRS 314.470.

(b) Have completed a board approved SANE educational course or a comparable course. The board or its designee shall evaluate the applicant’s course to determine its course comparability. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed.

(c) If the applicant has completed a comparable course, complete that portion of a SANE course of at least five (5) hours which shall include those topics specified in Section 2(3)(d)3a, b, c, g, k, and l of this administrative regulation if not included in the comparable course. The Office of the Attorney General may offer in cooperation with a board approved continuing education provider a course of at least five (5) hours to include those topics specified in this paragraph;

(d) Complete the “Application for SANE Credential”; and

(e) Pay the fee established in 201 KAR 20.240.

(2) Upon completion of the application process, the board shall issue the SANE credential for a period ending October 31.

Section 8. Renewal. (1) To renew the SANE credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the “SANE Renewal Application” and payment of the fee established in 201 KAR 20.240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, the individual may reinstate the credential by:

(a) Submitting the “Application for SANE Credential”;

(b) Paying the fee established in 201 KAR 20.240; and

(c) Submitting evidence of earning the continuing education requirement for the number of registered nurse licensure periods since the SANE credential lapsed.

(2) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to adoption by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board’s designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly-scheduled meeting, shall consider the comments.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Initial or Continued SANE Course Approval" (6/07), Kentucky Board of Nursing;
Part 2 of 2
(b) "Application for SANE Credential", 2/2006, Kentucky Board of Nursing; and
(c) "SANE Renewal Application", 2/2006, Kentucky Board of Nursing

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:30 a.m. to 4:30 p.m.

SUSAN DAVID, President
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on September 25, 2006, at 9 a.m. (EST) at 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 September 18, 2006, 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 close of business October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 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:
(a) What this administrative regulation does: It sets requirements for Sexual Assault Nurse Examiners (SANE) training programs and credentials
(b) The necessity of this administrative regulation. KRS Chapter 314 requires the board to set these requirements
(c) How this administrative regulation conforms to the content of the authorizing statutes: 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 implements the provisions of House Bill 102 (2006), the Nurse Licensure Compact. It would allow a nurse with a multistate privilege to be a SANE in Kentucky.
(b) The necessity of the amendment to this administrative regulation: The Nurse Licensure Compact, HB 102, requires certain changes to be made to conform to the statutes.
(c) How the amendment conforms to the content of the authorizing statutes: By implementing the appropriate provisions of the Nurse Licensure Compact.
(d) How the amendment will assist in the effective administration of the statutes: By implementing the appropriate provisions of the Nurse Licensure Compact.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses practicing in Kentucky on a multistate privilege, number unknown.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Nurses practicing on a multistate privilege in Kentucky may become SANES.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional cost.
(b) On a continuing basis: No additional cost.
(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:
Agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase will be necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The board of nursing.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 102 (2006)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue as a result of the amendment.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue as a result of the amendment.
(c) How much will it cost to administer this program for the first year? No additional cost.
(d) How much will it cost to administer this program for subsequent years? No additional cost.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-).
Other Explanations.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)
201 KAR 20:450. Alternative program.
RELATES TO: KRS 314.085, 314.091, 314.171, 314.470
STATUTORY AUTHORITY: KRS 314.131(1), (2), 314.171(3)
NECESSITY, FUNCTION AND CONFORMITY: KRS 314.171 authorizes the board to establish an impaired nurses committee to promote early identification, intervention, treatment, and rehabilitation of nurses who may be impaired by reason of illness, alcohol or drug abuse, or as a result of any physical or mental condition. This administrative regulation provides procedures for the implementa-
tion of an alternative program.

Section 1. Definitions (1) "Approved treatment provider" means an alcohol or drug treatment provider that meets the standards as set out in Section 6 of this administrative regulation.

(2) "Board" means the Board of Nursing.

(3) "Chemically-dependent individual" means a nurse or applicant for a credential issued by the board whose ability to practice according to acceptable and prevailing standards of care is or may be impaired by reason of alcohol or drug abuse.

(4) "Program" means the Kentucky Altemate Recovery Effort for Nurses which is the alternative program operated by the board for nurses or applicants for a credential issued by the board.

Section 2. Admission and Denial to the Program. (1) In order to gain admission to the program, an individual shall:

(a) Be an advanced registered nurse practitioner, a registered nurse or a licensed practical nurse licensed in the Commonwealth of Kentucky or an applicant for a credential issued by the board,

(b) Request participation in the program regardless of whether referred by the board, self, or another person,

(c) Be licensed as an advanced registered nurse practitioner, a registered nurse or a licensed practical nurse currently enrolled in a state-approved alternative program, if requesting licensure by endorsement from another state,

(d) Admit in writing to being a chemically-dependent individual,

(e) Agree in writing to the terms set forth in the program agreement,

(f) Obtain a current chemical dependency assessment, which may include a complete physical and psychosocial evaluation performed by a licensed or certified medical, mental health or psychological specialist in the field of drug, alcohol, or other chemical dependency;

(g) Provide any evaluation and treatment information, disclosure authorizations, and releases of liability as may be requested by the program staff,

(h) Agree not to be employed in any capacity in a patient care setting or one which requires licensure until approved to do so by the program staff, and

(i) Have attended an approved treatment provider program,

(2) Admission to the program shall be denied if the applicant:

(a) Does not meet the eligibility requirements for admission as set by subsection (1) of this section;

(b) Is not eligible for licensure in Kentucky,

(c) Admission to the program may be denied if the applicant:

(a) Diverted scheduled substances for other than self-administration,

(b) Will not substantially benefit from participation in the program;

(c) Has a criminal conviction related to the sale or distribution of scheduled substances or legend prescription drugs; or

(d) Has been terminated from alternative program participation in Kentucky or any other state.

(4) In the case of an applicant for a credential issued by the board, admission to the program shall be conditioned upon obtaining licensure in Kentucky. Failure to obtain licensure shall result in denial of admission to the program.

Section 3. Requirements for Participation in the Program. (1) A participant shall:

(a) Enter into a program agreement; and

(b) Comply with all of the terms and conditions of the program agreement for the time period specified in the agreement.

(2) The program agreement shall be updated and modified as needed to address the participant's progress in recovery and may include any of the following:

(a) A requirement that the participant undergo and successfully complete chemical dependency treatment by an approved treatment provider;

(b) A requirement that the participant agree not to practice in any capacity in a patient care setting or one which requires licensure until approved to do so by the program;

(c) A requirement that the participant undergo and successfully complete the continuing care program recommended by the approved treatment provider and designated in the program agreement. The continuing care program may include individual or group counseling or psychotherapy;

(d) A requirement that the participant refrain from the use of alcohol, mood-altering substances including herbal preparations, over-the-counter medications containing alcohol or mood-altering substances, and any other medication except for substances prescribed by a practitioner authorized by law to prescribe for a specific medical condition;

(e) A requirement that the participant inform all treating health care practitioners of the participant's chemical dependency and recovery status prior to receiving a prescription for any medication, mood-altering substance, or herbal preparation;

(f) A requirement, when a participant must take any substance prescribed or recommended by a practitioner, that the participant provide the program with written documentation from the practitioner that the use of the substance does not impair the participant's ability to practice nursing in a safe and effective manner and will not interfere with the participant's recovery program provided the substance is used in accordance with the prescription or recommendation;

(g) A requirement that if the participant is prescribed, recommended, or dispensed any medication by a practitioner, the participant shall cause the practitioner to complete a medication report form provided by the program. The medication report form shall include the diagnosis and a copy of any prescription from any physician, and shall be submitted to the program within the time specified in the program agreement. Consultation with a physician addictionologist may be required by the program and the participant shall agree to abide by any determination made by the physician addictionologist;

(h) A requirement that the participant cause all treatment providers and counselors to provide any reports as may be required by the program at the intervals specified in the program agreement;

(i) A requirement that the participant submit to random alcohol and drug testing when requested by the program, and that the participant comply with all requirements of the program concerning random alcohol and drug testing;

(j) A requirement that the participant attend health professionals' support group, twelve (12) step group meetings, or other group meetings as specified by the program agreement, and that the participant verify attendance at these meetings by signature of a group or meeting representative and submit the signatures to the program;

(k) A requirement that the participant comply with the employment restrictions specified by the program agreement;

(l) A requirement that the participant sign a waiver which would allow the program to communicate with the participant's treatment providers, counselors, employers, work site monitors, law enforcement officials and health professionals' support group facilitators, if applicable;

(m) A requirement that the participant be responsible for paying the costs of the physical and psychosocial assessment, chemical dependency treatment, and random alcohol and drug testing, or any other costs incurred in complying with the program agreement;

(n) A requirement that the participant submit a written personal report to the program at the intervals specified by the program agreement;

(o) A requirement that the participant meet in person with a program representative at the intervals specified by the program agreement; and

(p) A requirement that the participant shall not work as a nurse in another Nurse Licensure Compact state without the permission of the state and the other state; and

(q) A requirement that the participant comply with all other terms and conditions specified in the program agreement which the program staff determines are necessary to ensure that the participant is able to practice nursing in accordance with acceptable and prevailing standards of safe nursing care.

Section 4. Successful Completion of the Program. (1) A participant successfully completes the program when the participant fully complies with all of the terms of the program agreement for the period as specified in the agreement.
(2) When a participant successfully completes the program, the program shall notify the participant of the successful completion in writing. Once the participant receives this written notification of successful completion of the program, the participant shall no longer be required to comply with the program agreement.

(3) A participant who successfully completes the program shall not be reported to the National Council of State Boards of Nursing's disciplinary data bank.

Section 5. Causes for Termination from the Program. A participant may be terminated from the program for the following causes:
(1) Noncompliance with any aspect of the program agreement;
(2) Receipt of information by the board which, after investigation, results in disciplinary action by the board other than a reprimand; or
(3) Being unable to practice according to acceptable and prevailing standards of safe nursing care.

Section 6. Resignation From the Program. (1) A participant may resign from the program.
(2) Upon resignation, the participant shall sign an agreed order in conformity to 201 KAR 20:161, Section 2(4) voluntarily surrendering the nursing license.

Section 7. Standards for Approved Treatment Providers. In order to be an approved treatment provider, the treatment provider shall:
(1) Be accredited by the Joint Commission for the Accreditation of Healthcare Organizations or be state-certified and have operated as a chemical dependency treatment program for a minimum of one (1) year;
(2) Provide inpatient or outpatient care;
(3) Be based on a twelve (12) step program of Alcoholics Anonymous/Narcotics Anonymous or equivalent support group;
(4) Provide development of an individualized treatment and aftercare program to meet the specific needs of the participant and make recommendations regarding an ongoing rehabilitation plan;
(5) Be based on evaluation by a multidisciplinary team, which includes a psychiatrist, addictionologist, licensed counseling staff, and a core of referral specialists;
(6) Provide adequate detoxification services, including medical support and motivational support with no use of mood-altering drugs past detoxification period unless prescribed by a practitioner consistent with Section 3 of this administrative regulation;
(7) Provide clearly-stated costs for services, and offer fee schedules and flexibility in payment plans to accommodate participants who are uninsured or experiencing financial difficulties;
(8) Demonstrate willingness to provide information to the alternative program regarding the status of the participant after appropriate consents to release information are obtained;
(9) Work closely with the alternative program staff to assure proper implementation and administration of policies and procedures related to the program;
(10) Maintain timely and accurate communication with program staff, including assessments, diagnosis, prognosis, discharge summary and follow-up recommendations as well as reports on significant events which occur in treatment that are related to impairment and the ability to practice safely;
(11) Provide monthly written reports of progress.

Section 8. Incorporation by Reference. (1) "Medication Report Form", 9 KAR, 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 Whittignton Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SUSAN DAVIS, President
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC; August 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on "Hearing Date", 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 "Cancellation Date", five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business "Comments Date". Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-5309, 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:
(a) What this administrative regulation does: It sets requirements for the alternative program for chemically dependent nurses.
(b) The necessity of this administrative regulation: KRS Chapter 314 requires the board to set these requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: 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 implements the provisions of HB 102 (2006), the Nurse Licensure Compact. It would prohibit a nurse in the alternative program from working in another state without permission of that state and from Kentucky.
(b) The necessity of the amendment to this administrative regulation: The Nurse Licensure Compact, HB 102, requires certain changes to be made to conform to the statutes.
(c) How the amendment conforms to the content of the authorizing statutes: By implementing the appropriate provisions of the Nurse Licensure Compact.
(d) How the amendment will assist in the effective administration of the statutes: By implementing the appropriate provisions of the Nurse Licensure Compact.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses in the alternative program, number unknown.
(f) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to agree to not work in another state without permission.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Nurses in the alternative program will be in compliance with the Nurse Licensure Compact provisions.
(3) Provide an estimate of how much it will cost the administrative body 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: Agency funds.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Tiering
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The board of nursing.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 102 (2006)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue as a result of the amendment.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue as a result of the amendment.
   (c) How much will it cost to administer this program for the first year? No additional cost.
   (d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing (Amendment)

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

RELATES TO: KRS 314.035, 314.137
STATUTORY AUTHORITY: KRS 314.131(1), 314.137
NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs and for credentialing dialysis technicians.

Section 1. Definitions. (1) "Approved dialysis technician training program" means a program to train dialysis technicians that is approved by the board.
   (2) "Central venous catheter" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava.
   (3) "Dialysis technician applicant" means an individual who has applied for a dialysis technician credential.
   (4) "Dialysis technician trainee" means and individual who is enrolled in an approved dialysis technician training program.

Section 2. Requirements for Dialysis Technician Credential. (1)(a) An individual who applies to be credential as a dialysis technician in order to engage in dialysis care shall:
   1. File with the board the "Application for Dialysis Technician Credential";
   2. Have completed an approved dialysis technician training program;
   3. Pay the fee established in Section 12 of this administrative regulation;
   4. Provide to the board a certified copy of the court record of any misdemeanor or felony conviction from any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years; and
   5. Provide to the board a letter of explanation that addresses each conviction.
   (b)1. If the individual has completed an out-of-state dialysis technician training program, the board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as stated in Section 7 of this administrative regulation.
   2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of Section 7 of this administrative regulation.
   3. An individual who has completed an out-of-state dialysis technician training program shall be required to complete that portion of a board-approved dialysis technician training program related to the legal and ethical aspects of practice as set forth in the "Dialysis Technician Training Program Guide".
   4. An individual who has completed an out-of-state dialysis technician training program shall submit the "Checklist for Dialysis Technician Competency Validation" signed by the individual's immediate supervisor.

5. An individual who has completed an out-of-state dialysis technician training program shall submit evidence of:
   a. Successful completion of a comprehensive, written final examination from a board-approved dialysis technician training program;
   b. Current dialysis technician certification issued by the National Nephrology Certification Corporation, the Board of Nephrology Examiners Nursing and Technology, or the National Nephrology Certification Organization
   (2) An individual shall be exempt from the credentialing requirement while enrolled in an approved dialysis technician training program. The individual shall use the title dialysis technician trainee.

(3) Upon approval of the application, the board shall initially issue the dialysis technician credential for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.
(4) An applicant for a dialysis technician credential may engage in dialysis care as a dialysis technician applicant upon:
   1. Receipt by the board of the "Application for Dialysis Technician Credential"; and
   2. Meeting the requirements of subsection (6) of this section.
   (b) The dialysis technician applicant shall only practice dialysis care as an applicant until:
   1. The credential is issued, or
   2. The application is denied by the board.
   (5) An "Application for Dialysis Technician Credential" submitted for initial credentialing shall be valid for six (6) months from the date of receipt by the board.
   (6) A felony or misdemeanor conviction shall be reviewed to determine whether:
      (a) The application shall be processed with no further action; or
      (b) The application shall be processed only after:
      1. The applicant has entered into an agreed order with the board with terms and conditions as agreed by the parties; or
      2. If the parties are unable to agree on terms and conditions, a hearing is held pursuant to KRS 314.091 and 201 KAR 20:122, and a final decision is entered by the board.

Section 3. Renewal. (1) To be eligible for renewal of the credential, the dialysis technician shall submit, no later than one (1) month prior to the expiration date of the credential:
   (a) The "Application for Renewal of the Dialysis Technician"
(b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters; and
(c) The administration of blood and blood products.

Section 6. Discipline of a Dialysis Technician. (1) A dialysis technician, an employer of dialysis technicians, or any person having knowledge of facts shall report to the board a dialysis technician who may have violated any provision of this administrative regulation.
(2) The board shall have the authority to discipline a dialysis technician for:
(a) Failure to safely and competently perform the duties of a dialysis technician as stated in Section 5 of this administrative regulation;
(b) Practicing beyond the scope of practice as stated in Section 5 of this administrative regulation;
(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or embarrassment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence. A "convictor" shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime;
(d) Obtaining or attempting to obtain a credential by fraud or deception;
(e) Abusing controlled substances, prescription medications, or alcohol;
(f) Misuse or misappropriation of any drug placed in the custody of the dialysis technician for administration, or for use of others;
(g) Falsey or in a negligent manner making incorrect entries or failing to make essential entries on essential records;
(h) Having a dialysis technician's credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this commonwealth;
(i) Practicing without filing an "Application for Dialysis Technician Credential" or without holding a dialysis technician credential;
(j) Abuse of a patient;
(k) Theft of facility or patient property;
(l) Having disciplinary action on a professional or business license;
(m) Violating any lawful order or directive previously entered by the board;
(n) Violating any administrative regulation promulgated by the board; or
(o) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property.
(3) The discipline may include the following:
(a) Immediate temporary suspension of the credential, following the procedure set out in KRS 314.069;
(b) Reprimand of the credential;
(c) Probation of the credential for a specified period of time, with or without limitations and conditions;
(d) Suspension of the credential for a specified period of time;
(e) Permanent revocation of the credential; or
(f) Denying the application for a credential.
(4) The board shall follow the procedures set out in and have the authority set forth in KRS 314.091, 201 KAR 20.161 and 201 KAR 20.162 for management and resolution of complaints filed against a dialysis technician.
(5) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to $10,000.

Section 7. Dialysis Technician Training Program Standards. (1) Program administrator. A registered nurse, holding a current, active, Kentucky license, temporary work permit, or multistate privileges, with at least one (1) year of experience in dialysis care, shall be administratively responsible for planning, development, implementation, and evaluation of the dialysis technician training program. The name, title, and credentials identifying the educational
and professional qualifications of the program administrator shall be provided to the board. A change in the program administrator shall be reported to the board within thirty (30) days of the change.

(2) Faculty qualifications. The dialysis technician training program shall be taught by multidisciplinary faculty with expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications of each instructor shall be provided to the board. A change in faculty shall be reported to the board within thirty (30) days of the change.

(3) The dialysis technician training program shall be based upon the "Dialysis Technician Training Program Guide".

(4) The dialysis technician training program syllabus shall include:

(a) Prerequisites for admission to the program;
(b) Program outcomes. The outcomes shall provide statements of measurable competencies to be demonstrated by the learner;
(c) Objectives. Objectives shall be stated in behavioral terms with supportive content identified;
(d) Content. The content shall be described in outline format with corresponding time frame and testing schedules;
(e) Teaching methods. The activities of both instructor and learner shall be specified. These activities shall be congruent with stated objectives and content, and reflect application of adult learning principles;
(f) Instructional or reference materials. All required instructional reference materials shall be identified; and
(g) Evaluation. There shall be clearly defined criteria for evaluating the learner's achievement of program outcomes. There shall also be a process for annual program evaluation by trainees, program administrator [provider], faculty, [administration] and employers.

(5) Any proposed substantive changes to the dialysis technician training program syllabus after initial submission shall be submitted to the board in writing and shall not be implemented without approval from the board.

(6) Trainee clinical practice requirements. The dialysis technician trainee enrolled in a dialysis technician training program shall practice dialysis care incidental to the training program only under the supervision of a faculty member, or his designee.

(7) The dialysis technician training program shall be at least 400 hours in length. A minimum of 200 hours shall be didactic.

(8) Completion requirements. Requirements for successful completion of the dialysis technician training program shall be clearly specified. The requirements shall include demonstration of clinical competency and successful completion of a comprehensive, written final examination. There shall be a statement of policy regarding a trainee who fails to successfully complete the training program. [The statement of policy adopted by the training program shall include requirements that a person:
(a) Shall not be enrolled in a training program more than two (2) times;
(b) Shall show continuing progress toward completion of the program; and
(c) Who fails to successfully complete the program within twenty (20) calendar weeks shall cease functioning as a trainee until that person is re-enrolled in a subsequent training program if that opportunity still exists pursuant to paragraph (a) of this subsection.]

(9) The program shall establish a written records retention plan describing the location and length of time records are maintained. At a minimum, the following records shall be maintained by the program:
(a) Provider name, dates of program offenses, [date] and sites [site] of the training program;
(b) The program code number issued by the board; and
(c) Trainee roster, with a minimum of name, date of birth, Social Security number, and program completion date.

(10) An individual who successfully completes the training program shall receive a certificate of completion that documents the following:
(a) Name of Individual;
(b) Title of training program, date of completion, and location;
(c) Provider's name;
(d) The program code number issued by the board; and
(e) Name and signature of program administrator.

(11) The program shall submit the "List of Dialysis Technician Training Program Graduates" within three (3) days of the program completion date.

(12) The program shall notify the board in writing within thirty (30) days of a training program closure. The notification shall include the date of closure, a copy of the program trainee roster from the date of the last renewal to the date of closure, the location of the program's records, and the name and address of the custodian of the records.

Section 8. Dialysis Technician Training Program Initial Approval. (1) To receive initial approval, a dialysis technician training program shall:
(a) File an "Application for Dialysis Technician Training Program Approval"; and
(b) Pay the fee established in Section 12 of this administrative regulation.

(2) Board approval for a dialysis technician training program that meets the requirements of this administrative regulation shall be granted for a two (2) year period from the date of approval.

(3) Upon approval, the board shall issue a program code number.

Section 9. Continued Board Approval of a Dialysis Technician Training Program. (1) To receive continued approval, a dialysis technician training program shall:
(a) File an "Application for Dialysis Technician Training Program Approval";
(b) Submit to the [the] annual program evaluation summary report and any actions taken as a result of the evaluation is as required by Section 7(4)(g) of this administrative regulation; [and]
(c) Submit a list of current faculty including the name, title, and credentials identifying the educational and professional qualifications of each instructor.

(2) Submit a copy of the program trainee roster for the past two (2) years as required by Section 7(9)(c) of this administrative regulation; and

(e) Pay the fee established in Section 12 of this administrative regulation.

(2) The application shall be submitted at least two (2) months prior to the end of the current approval period.

(3) Continued approval shall be based on compliance with the standards set out in Section 7 of this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to maintain continued approval, the approval shall lapse.

Section 10. Reinstatement of Dialysis Technician Training Programs. A program whose approval has lapsed and that seeks to reinstate that approval shall:
(a) File an "Application for Dialysis Technician Training Program Approval"; and
(b) Pay the fee established in Section 12 of this administrative regulation.

Section 11. Board Actions on Dialysis Technician Training Programs. (1) A representative of the board may make a site visit to a dialysis technician training program to determine if the program is complying with regulatory standards.

(2) The board shall require a report of the site visit. Identifying deficiencies for the training program, and shall include recommendations and requirements to be met in order to maintain compliance with standards.

(3) The program administrator shall submit to the board a response to the site visit report.

(4) Based on the report of deficiencies, the training program's response, and any other relevant evidence, the board may grant approval, continue approval, continue approval with stipulations as determined by the board, or proceed to deny or withdraw approval of the program.

(5) [The board may deny, limit, revoke or suspend the approval status of a dialysis technician training program for violation of the]
(2) A dialysis technician training program administrator may request a review of [appeal] a board decision concerning approval
using the following procedure:
- (a) A written request for the review shall be filed with the board
within thirty (30) days after the date of notification of the board
action which the dialysis technician training program administrator
contests.
- (b) The board, or its designee, shall conduct a review. The
dialysis technician training program administrator may appear
in person to present reasons why the board's decision should be set
aside or modified.
- (c) The dialysis technician training program administrator shall
be notified of the board's decision.
- (d) The board shall deny or withdraw approval of a program
after an administrative hearing conducted pursuant to KRS Chap-
ter 13B.

Section 12. Fees. (1) The application fee for the initial creden-
tial shall be seventy (70) dollars.
(2) The credential renewal fee shall be seventy (70) dollars.
(3) The credential reinstatement fee shall be seventy (70) dol-

- (4) The dialysis technician training program initial approval fee
shall be $590.
- (5) The dialysis technician training program continued approval
fee shall be $800.
- (6) The dialysis technician training program reinstatement fee
shall be $590.
(7) An additional fee of twenty-five (25) dollars shall be
charged for an application for renewal of the credential that is filed
after the deadline for filing.
(8) An additional fee of $150 shall be charged for an applica-
tion for continued dialysis technician training program approval
that is filed after the deadline for filing.
(9) A fee of thirty-five (35) dollars shall be charged for issuing a
duplicate of the credential.
(10) A check submitted to the board for payment of a fee which is
returned by the bank for nonpayment shall be assessed a return
check fee of thirty-five (35) twenty-five (25) dollars.
(11) A fee of thirty-five (35) dollars shall be charged for written
verification of a dialysis technician credential. [If obtained from the
board website, the fee shall be one (1) dollar per name.]
(12) A fee of twenty-five (25) dollars shall be charged for a
duplicate application form which is issued due to the failure to
maintain a current mailing address as required by Section 13 of
this administrative regulation.
(13) All fees shall be nonrefundable.

Section 13. Miscellaneous Requirements. (1) Any person cre-
credentialated by the board as a dialysis technician shall maintain a
current mailing address with the board and immediately notify the
board in writing of a change of mailing address.
(2) As a condition of holding a credential from the board, a
dialysis technician shall be deemed to have consented to service
of notices or orders of the board at the mailing address on file with
the board. Any notice or order of the board mailed or delivered to
the mailing address on file with the board shall constitute valid
service of the notice or order.
(3) Any dialysis technician credentialated by the board shall,
within thirty (30) days of entry of the final judgment, notify the
board in writing of any misdemeanor or felony conviction in this or
any other jurisdiction. A conviction shall include pleading no con-
test, entering an Alford plea, or entry of a court order suspending
the imposition of a criminal penalty to a crime. Upon learning of
any failure to notify the board under this provision, the board may
initiate an action for immediate temporary suspension until the
person submits the required notification.
(4) Any dialysis technician credentialated by the board shall im-
mEDIATELY notify the board in writing if any professional or business
license or registration that is issued to the person by any agency of the common-
wealth or any other jurisdiction is surrendered or terminated under
threat of disciplinary action or is refused, limited, suspended, or
revoked, or if renewal of continuance is denied.
(5) If the board has reasonable cause to believe that any dialys-
sis technician is unable to practice with reasonable skill and safety
or has abused alcohol or drugs, it may require the person to submit
to a chemical dependency evaluation or a mental or physical ex-
amination by a practitioner [physician or psychologist] it designates.
Upon failure of the person to submit to a chemical depend-
ency evaluation or a mental or physical examination, unless due to
circumstances beyond the person's control, the board may initiate
an action for immediate temporary suspension pursuant to KRS
314.089 or deny an application until the person submits to the
required examination.
(6) Every dialysis technician shall be deemed to have given
consent to submit to a chemical dependency evaluation or a men-
tal or physical examination when so directed in writing by the
board. The direction to submit to an evaluation or an examination
shall contain the basis of the board's reasonable cause to believe
that the person is unable to practice with reasonable skill and
safety, or has abused alcohol or drugs. The person shall be
deemed to have waived all objections to the admissibility of the
examining practitioner's [physician or psychologist] testimony or
examination reports on the ground of privileged communication.
(7) The dialysis technician shall bear the cost of any chemical
dependency evaluation or mental or physical examination ordered
by the board.
(8) The board may make an unscheduled monitoring visit to a
dialysis technician training program to determine if the program is
complying with all regulatory requirements.

Section 14 Incorporation by Reference. (1) The following ma-
terials are incorporated by reference:
(a) "Application for Dialysis Technician Training Program
Approval", Kentucky Board of Nursing, 6/02 [7/04];
(b) "Application for Dialysis Technician Credential", Kentucky
Board of Nursing, 7/04;
(c) "Application for Renewal of Dialysis Technician Credential",
Kentucky Board of Nursing, 7/04,
(d) "Checklist for Dialysis Technician Competency Validation",
Kentucky Board of Nursing, 7/04,
(e) "Dialysis Technician Training Program Guide" (August 14,
2001), Kentucky Board of Nursing; and
(f) "List of Dialysis Technician Training Program Graduates",
Kentucky Board of Nursing, 7/04.
(2) This material may be inspected, copied, or obtained, sub-
tected 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.

SUSAN DAVIS, President
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
September 25, 2006, 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 September 18, 2006, five workdays
prior to the hearing, of their intent to attend. If no notification of
intent to attend the hearing is received by that date, the hearing
may be canceled. This hearing is open to the public. Any person
who wishes to be heard will be given an opportunity to comment on
the proposed administrative regulation. A transcript of the public
hearing will not be made unless a written request for a transcript is
made. If you do not wish to be heard at the public hearing, you
may submit written comments on the proposed administrative
regulation. Written comments shall be accepted until close of busi-
ness October 2, 2006. Send written notification of intent to be
heard at the public hearing or written comments on the proposed
administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel,
Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,
Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-
3538, email nathan.goldman@ky.gov
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: It sets requirements for dialysis technicians and dialysis technician training programs.
(b) The necessity of the administrative regulation: KRS 314.137 requires the Board to promulgate this regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements for dialysis technicians and dialysis technician training programs.
(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 several procedures for dialysis technicians including how out of state DTs become credentialed and how DTs can reinstate their credential. It also updates procedures of DT training programs.
(b) The necessity of the amendment to this administrative regulation: Several procedures needed updating.
(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set requirements.
(3) How the amendment will assist in the effective administration of the statutes: By updating procedures.
(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Dialysis technicians, approximately 700, and dialysis technician training programs, approximately 10.
(5) Provide an analysis of how the entities identified in question (4) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) The actions that each of the regulated entities identified in question (4) will have to take to comply with this administrative regulation or amendment: New procedures will be in place.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4): No additional cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (4): They will have new procedures to follow.
(6) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: no cost.
(b) On a continuing basis: no cost.
(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.
(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 will be necessary.
(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.177
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect? No additional cost.
(b) How much will it cost to administer this program for the first year? No additional cost.
(c) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant.

RELATES TO: KRS 164.772, 214.610(1), 327.050(8), (9), 327.070
STATUTORY AUTHORITY: KRS 327.040(10), (11)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate administrative regulations for the effectuation of the purposes of KRS Chapter 327, and 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competence as a condition of license renewal. This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

Section 1. A credential shall be renewed upon:
(1) Payment of the renewal fee established in 201 KAR 22:135 on or before March 31st of each even numbered year;
(2) Submission of the completed Renewal Application;
(3) Verification of continued competence [beginning with the renewal period January 1, 2006 through March 31, 2007] as set forth in 201 KAR 22:045;
(4) In accordance with the course requirement in KRS 327.050(8), verification of completion of a Cabinet for Health Services (CHS) approved two (2) hour course on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS, pursuant to KRS 214.610(1) but not more than every ten (10) years. The course shall be completed within the renewal biennial period that it is due; and
(5) Verification that, since the last renewal period, the credential holder has not:
(a) Been in violation of KRS 327.070; (b) Had any professional license or credential disciplined or under current disciplinary review in this state or any other jurisdiction; (c) Had a civil claim made against the credential holder which related to the credential holder's practice of physical therapy; or (d) Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) per KRS 164.772 effective 7/1/92.

Section 2. Credentials not renewed by the board by March 31 of each even numbered year shall lapse.

Section 3. A credential holder may request the credential be placed on inactive status. The credential holder on inactive status:
(1) Shall submit the renewal fee every cycle to maintain the credential;
(2) Shall not engage in the practice of physical therapy; and
(3) Shall not be required to comply with continued competence
requirements.

Section 4. A credential holder who has a credential that has
lapsed less than three (3) years or any credential holder on inac-
tive status may reinstate upon:
(1) Meeting the requirements of Section 1(2) through (5) of this
administrative regulation for the current renewal period, and
(2) Submission of payment of the reinstatement fee estab-
lished in 201 KAR 22:135.

Section 5. A credential holder who has a credential that has
lapsed greater than three (3) years may reinstate upon:
(1) Meeting the requirements of Section 4;
(2) Submission of all credentials from any jurisdictions since last
renewal; and
(3) If not holding a current credential, the board may require
any of the following:
(a) Submission of evidence of professional competency;
(b) An agreement to practice physical therapy under supervi-
sion not to exceed six (6) months; or
(c) Successful completion of the board approved examination.

Section 6. (1) "Renewal Application 8/11/06/02/04/03", is in-
corporated by reference.
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the State Board of Physical
Therapy at 9110 Leesgate Road, Suite 6, Louisville, Kentucky
40222, Monday through Friday, 8 a.m. to 4:30 p.m.
TROY GRUBB, P.T., Chair
APPROVED BY AGENCY: July 20, 2006
FILED WITH LRC: August 14, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
September 22, 2006 at 9 a.m. (EST) at 9110 Leesgate Road, Suite
6, Louisville, Kentucky 40222-5159. Individuals interested in being
heard at this hearing shall notify this agency in writing five days
deprior 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 2, 2006.
Send written notification of intent to be heard at the public
hearing or written comments on the proposed administrative regu-
lation to the contact person.
CONTACT PERSON: Becky Klusch, Executive Director, Board
of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville,
Kentucky 40222-5159, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation sets out the renewal and reinstatement procedures
for Physical Therapists and Physical Therapist Assistants.
(b) The necessity of this administrative regulation. This admin-
istrative regulation was necessary to implement provisions of KRS
Chapter 327.040.
(c) How this administrative regulation conforms to the conten-
t of the authorizing statutes: It provides the procedures for renewal
of a credential holder.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: It provides
the procedures for renewal requirements for credential holders.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: The amendment clarifies the renewal process.
(b) The necessity of the amendment to this administrative
regulation: To clarify requirement for renewal of a credential holder
for public protection.
(c) How the amendment conforms to the content of the
authorizing statutes: The board is authorized to set standards for
licensing and renewal procedures.
(d) How the amendment will assist in the effective administra-
tion of the statutes: By clarifying the requirements of renewal of a
credential holder in the state of Kentucky.
(e) List the type and number of individuals, businesses, organi-
izations, or state and local governments affected by this administra-
tive regulation: Approximately 3,800 physical therapists and physi-
cal therapist assistants.

(3) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this administra-
tive regulation, if new, or by the change, if it is an amendment,
including:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative
regulation or amendment: There will be no change to regulated
entities identified in question (3), only a revised renewal applica-
tion.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): There will be no cost to the entities in questions (3).
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): The renewal application is being
revised to reflect the requirement of 201 KAR 22.045.

(5) Provide an estimate of how much it will cost the administra-
tive body to implement this administrative regulation:
(a) Initially: There will be minimal costs to the board.
(b) On a continuing basis: Minimal costs to the board.
(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation:
Agency Revenue Fund
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: There will no
increase in fees or funding.
(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: This
regulation does not change the fees directly or indirectly.
(d) TIERING: Is tiering applied? Tiering was not used in this
administrative regulation because the administrative regulation
applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
 service, or requirements of a state or local government (including
cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government
(including cities, counties, fire departments, or school districts) will
be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative
regulation.
4. Estimate the effect of this administrative regulation on the
expenditures and revenues of a state or local government agency
(including cities, counties, fire departments, or school districts) for
the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first
year?
(d) How much will it cost to administer this program for subse-
quent years?
Note: If specific dollar estimates cannot be determined, provide
a brief narrative to explain the fiscal impact of the administrative
regulation.
Revenues (+/-):
GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

201 KAR 22:140. Funding of Impaired physical therapy practitioners committee.

RELATES TO: KRS 327.040(13), 327.045, 327.070(2)(a)
STATUTORY AUTHORITY: KRS 327.045(4)
NECESSITY, FUNCTION, and CONFORMITY: KRS 327.045(4) requires the board to promulgate an administrative regulation establishing the assessment fee to be collected by the board as part of the licensure and certification renewal application fee. This administrative regulation establishes the assessment fee.

Section 1. (1) An assessment fee of twenty (20) dollars shall be paid to the board by each credential holder;
(2) The assessment fee shall be waived for the biennial renewal period ending March 31, 2007; and
(3) The assessment fee shall be waived for reinstatement applications through December 31, 2006.

Section 2. (1) The fee may be used for education, travel expenses and a per diem to committee members during the normal course of committee business as assigned by the program coordinator and the executive director.
(1) Travel expenses shall be in accordance with state travel administrative regulations.
(2) Each committee member shall be entitled to receive an honorarium of twenty-five (25) dollars for attending meetings required or approved by the board.

TROY GRUBB, P.T., Chair
APPROVED BY AGENCY: July 20, 2006
FILED WITH LRC: August 14, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2006 at 9 a.m. (EST) at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159. Individuals interested in being heard at this hearing shall notify the agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. Becky Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director
(a) What this administrative regulation does: This administrative regulation establishes the assessment fee collected by the board.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provision of KRS 327.045(4).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the fee charged by the board.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State Board of Physical Therapy
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(13) and 327.045(4).
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Impaired Physical Therapy Practitioners Committee's (IPTPC) expenses are well below the revenue that has been collected since the implementation of this fee.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Reduce...
board income by $72,000 first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Reduce board income by $1,000 for following year and no effect on revenue after second year.

(c) How much will it cost to administer this program for the first year? The board has spent approximately $13,000 each year to administer the ITPFC.

(d) How much will it cost to administer this program for subsequent years? Average costs to administer the ITPFC is approximately $13,000 each year.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Licensure and Certification for Dietitians and Nutritionists (Amendment)

201 KAR 33:030. Continuing education requirements for licensees and certificate holders.

RELATES TO: KRS 310.041(1), 310.050(3)
STATUTORY AUTHORITY: KRS 310.041(1), 310.050(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.050(3) requires completion of continuing education prior to the renewal of a license or certificate, and KRS 310.041(1) requires the board to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes continuing education requirements for dietitians and nutritionists.

Section 1. (1) (a) The annual continuing education compliance period shall extend from November 1 of each year to October 31 of the next year.

(b) Prior to renewal of a license or certificate for the next licensure or certification period, a licensee or certificate holder shall have earned fifteen (15) hours of approved continuing education during the compliance period.

(c) A person who is either licensed as a dietitian or [and] certified as a nutritionist, or who is both a licensed dietitian and certified nutritionist, shall have earned a total of fifteen (15) hours of approved continuing education during the compliance period, prior to renewal of a license or [the license and] certificate for the next licensure period.

(2) An initial licensee or certificate holder shall be exempt from the continuing education requirements for the first license or certification renewal.

(3) [Hours of continuing education credit may be obtained by attending and participating in a continuing education activity that has been approved by the board.] No more than fifteen (15) hours of continuing education may be carried over into the next continuing education period.

(4) [It shall be the responsibility of each licensee or certificate holder to finance the costs of continuing education.

(5) For purposes of the audit set forth in subsection (8) of this section, every licensee or certificate holder shall maintain a record of all continuing education courses attended for two (2) years after the continuing education period. Appropriate documentation to be kept shall include [includes the continuing professional education annual statement furnished by the Commission on Dietetic Registration or any of the following):

(a) Certificates of attendance for the prior-approved continuing education;
(b) Transcripts for academic coursework;
(c) Reprints of journal articles published; or
(d) Proof of attendance, description of activity, and professional qualifications of the presenter for [out-of-state] continuing education activites.

(6) [Each licensee or certificate holder shall sign a statement on the renewal application form indicating compliance with the continuing education requirements. No license or certificate shall be renewed without this sworn statement.

(7) [(a) The board shall] [may] audit at least fifteen (15) percent of licensees’ [a–licensees’] or certificate holders’ [holders’] continuing education records each year.

(b) Licensees or certificate holders who are audited shall be chosen in a random manner or at the discretion of the board.

(c) Falsifying reports, records, or other documentation relating to continuing education requirements shall result in formal disciplinary action.

Section 2. Approved Continuing Education Activities. (1) [Obtaining continuing education in:]

(a) [Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, interactive workshop, seminar or lecture which has been approved by the board.

(b) Approved activities may be obtained by attending and participating in a continuing education activity, interactive workshop, seminar or lecture which has been approved by the Commission on Dietetic Registration of the American Dietetic Association.

(2) Criteria for subject matter.

(a) Subject matter for continuing education hours shall reflect the educational needs of the licensed dietitian or certified nutritionist and the nutritional health needs of the consumer.

(b) Subject matter shall be limited to offerings that are scientifically founded and offered at a level beyond entry-level dietetics for professional growth.

(c) The following areas shall be deemed appropriate subject matter for continuing education credit if, in the judgment of the board, they are directly related to the practice of dietetics or nutrition:

1. Sciences on which dietetic practice, dietetic education, or dietetic research is based including nutrition, biochemistry, physiology, food management and behavioral and social sciences to achieve and maintain people's nutritional health.

2. Nutrition therapy related to assessment, counseling, teaching, or care of clients in any setting.

3. Management or quality assurance of food and nutritional care delivery systems.

(3) Standards for approval of continuing education programs and activities. A continuing education activity shall be approved [qualified for approval] if the board determines that it:

(a) Meets all of the criteria set forth in subsection (2);

(b) Establishes an organized program of learning, including a workshop or symposium, which contributes directly to the professional competency of the licensee or certificate holder; [and]

(c) Pertains to subject matters which relate integrally to the practice of dietetics or nutrition; and

(d) Is conducted by individuals who have education, training and experience in the subject matter of the program.

(4) Academic coursework.

(a) Coursework shall be eligible for credit if it:

1. Has been completed at a U.S. regionally accredited college or university; and

2. Is beyond entry-level dietetics;

(b) One (1) academic semester credit shall equal fifteen (15) continuing education hours;

(c) One (1) academic quarter credit shall equal ten (10) continuing education hours.

(d) An audited class shall equal eight (8) continuing education hours for a semester or five (5) continuing education hours for a quarter.

(5) Scholarly publications. A publication may be approved if it is [published in a refereed professional journal or other publication. If the article specifically relates to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research. Continuing education credit hours for authors of a scholarly publication may be reported using the following guidelines:

(a) Senior author: first of two (2) or more authors listed;

(b) Co-author: second of two (2) authors listed;

(c) Contributing author: all but senior of three (3) or more
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authors.
(d) Research papers:
1. Single author - ten (10) hours.
2. Senior author - eight (8) hours.
3. Co-author - five (5) hours.
4. Contributing author - three (3) hours.
(a) Technical articles:
1. Single author - five (5) hours.
2. Senior author - four (4) hours.
3. Co-author - three (3) hours.
4. Contributing author - two (2) hours.
(f) Information sharing articles - one (1) hour.
(b) Abstracts:
1. Senior author - two (2) hours
2. Co-author - one (1) hour.
(b) Poster sessions:
(a) Continuing education credit shall be approved [may be obtained] for attending juried poster sessions [at national or state professional meetings] that meet the criteria for appropriate subject matter established in subsection (3) of this section upon submission of the documentation required in paragraph (c) of this subsection.
(b) One (1) hour of continuing education credit shall be allowed for each hour of (one of six) posters reviewed not to exceed three (3) [five-six] hours in a continuing education year.
(c) The following documentation shall be submitted for approval of continuing education credit for attending juried poster sessions:
1. Certificate of attendance or completion indicating:
   a. The date of the session;
   b. The number of hours attended;
   c. The objectives of the session;
   d. The session provider;
   2. An agenda outlining the session;
   3. A program, flyer, or brochure describing the poster session;
   4. Handouts from the poster session.
   (d) The following education hours for posters:
   (a) Credit shall be given for presentations to the lay public;
   (b) Credit [Hours] shall be allowed [requested] only once for the same presentation;
   (c) The presenter shall receive twice the number of hours approved for the activity;
   (d) Two (2) hours per topic shall be allowed for presenters of juried poster sessions that meet the criteria for appropriate subject matter established in subsection (3) of this section [at national or state professional meetings]; and
   (e) A copy of the presentation or poster, abstract or manuscript, and documentation of the peer review process shall be included in the licensee's or certificate holder's documentation file.
(b) Exhibits.
(a) Continuing education credits may be obtained for attending exhibits that meet the criteria for appropriate subject matter established in subsection (3) of this section.
(b) One (1) hour of continuing education credit shall be allowed for each hour of exhibits reviewed not to exceed three (3) hours in a continuing education year.
(c) Documentation of attendance or completion of review of exhibits shall be submitted showing:
1. Date;
2. Provider;
3. Timeline, and
4. Content of the exhibits.
(b) Residency and fellowship programs.
(a) Fifteen (15) hours of continuing education credit shall be granted for completion of a residency or fellowship program if the program is:
1. At the postbaccalaureate level;
2. Dietetics-related;
3. Formalized or structured experiences; and
4. Sponsored by a U.S. regionally accredited college or university of an institution accredited or approved by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the National Committee for Quality Assurance (NCQA).
(b) Documentation of the above shall be submitted and shall include:
1. Certificate of completion, and
2. Name, address, phone number, e-mail address, and fax number of the provider.
(c) Certification program. (a) Fifteen (15) hours of continuing education credit shall be granted for completion of a certification approved by the board that:
1. Is dietetics-related;
2. Requires that candidates meet eligibility requirements; and
3. Requires that a candidate or certificate holder pass an examination to become certified initially and to be recertified.
(b) Up to fifteen (15) hours of continuing education credit, for the exam only, may be carried over to the following year.
(c) Documentation: A document verifying the date of issue, duration of certification, and name, address, phone number, e-mail address, and fax number of the provider shall be submitted.
(d) Self study courses. (a) Fifteen (15) hours of continuing education credit shall be granted for completion of a Commission on Dietetic Registration preapproved self-study program that meets the following criteria:
1. The program shall address a single specific subject in depth;
2. Test items shall accompany the program and be based on its content and
3. The program may be audio-based, computer based, printed, video-, DVD-, or CD-based or Web-based.
(b) The following documentation shall be submitted:
1. A certificate of attendance or completion;
2. An agenda or outline of the program; and
3. Description of the objectives, date, timeline, and provider of the program.

Section 3. Procedures for Prior Approval of Continuing Education Activities. (1) [An organization or] a person seeking [which seeks] prior approval of a course, program, or other continuing education activity shall apply to the board for approval at least sixty (60) days in advance of the commencement of the activity.
(2) The application shall state the:
(a) Dates;
(b) Subjects offered;
(c) Objectives for the activity;
(d) Total hours of instruction;
(e) Names and qualifications of speakers; and
(f) Other pertinent information.
(3) The board shall approve or deny timely and complete applications before the commencement of the activity.
(4) Review of programs. The board may monitor and review any continuing education program already approved by the board. Upon evidence of significant deviation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.
(5) Programs pertaining to the following subject areas shall require preapproval by the board.
(a) Experiential skill development; fifteen (15) hour limit;
(b) Independent learning programs that are sponsored and related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research; ten (10) hour limit;
(c) Study groups involving nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research; ten (10) hour limit; and
(d) Professional readings of journal articles related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research - three (3) hour limit.

Section 4. Subsequent Approval of Continuing Education Activities. (1) Individual or group educational activities for which program providers or sponsors have not requested continuing education hour approval prior to the date of the activity may be approved by the board for continuing education credit. Activities which have received prior approval may not be submitted on a subsequent approval basis.
(2) The person seeking subsequent approval of continuing education activities shall submit the following information regarding the program attended:
(a) Dates,
VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

FILED WITH LRC: July 25, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2005 at 1 p.m., (EST) in the Board Conference Room B, Division of Occupations and Professions, 911 Leawood Dr., Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 2, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person indicated below.

CONTACT PERSON: Claudia Wagner, Director, Finance and Administration Cabinet, Division of Occupations and Professions, 911 Leawood Dr., Frankfort, Kentucky 40601, phone (502) 584-3296 ext. 239, fax (502) 696-5896.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Claudia Wagner

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements for dietitians and nutritionists.
(b) The necessity of this administrative regulation: KRS 310.041 and 310.050 authorize the board to promulgate administrative regulations establishing the criteria for the required continuing education needed for relicensure.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 310.041 and 310.050 authorize the board to establish by administrative regulation the type of classes that are acceptable, the documentation required, and the amount of time that each specific class or session is allowable.
(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 by specifying the time each class is worth, the type of class that is acceptable and the type of documentation required for approval of continuing education.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation changes the documentation required; clarifies the value/amount of classes, and fine tunes what type of classes or programs will be acceptable.
(b) The necessity of the amendment to this administrative regulation: KRS 310.041 and 310.050 authorize the board to promulgate administrative regulations establishing the criteria for the required continuing education needed for re-licensure.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 310.041 and 310.050 authorize the board to establish by administrative regulation the type of classes that are acceptable, the documentation required, and the amount of time that each specific class or session is allowable.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration by specifying the time each class is worth, the type of class that is acceptable and the type of documentation required for approval of continuing education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently has 1,019 persons licensed. The board annually receives 85-100 new applications for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment.
including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. None.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The board estimates that no additional costs will be incurred by this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? It will allow individuals who are seeking approval for continuing education fine tunes criteria of documentation to be provided, and sets the time amount of sessions/classes.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The board estimates that no additional costs will be incurred by this amendment.
(a) Initially: The board estimates that no additional costs will be incurred by this amendment.
(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this regulation will be funded by application fees paid by applicants.
(7) 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 it if an amendment. No increase in the fees is presently anticipated by reason of this amendment.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: is tiering applied? No. This administrative regulation applies to all applicants who seek a license.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No.
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years?
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

COMMERCIAL CUPBOARD
Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:083. Holding and Intrastate transportation [Transportation and holding] of captive cervids.

RELATES TO: KRS 150.025, [150-160], 150.260, 150.290, 150.725, 150.730, 150.735, 150.740

STATUTORY AUTHORITY: KRS 150.025, [150-160(8)], 150.260, 150.720

NECESSITY, FUNCTION AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transport of wildlife. KRS 150.025(8) requires that a person who wishes to transport wildlife into Kentucky obtain a permit from the department. KRS 150.260 authorizes the department to promulgate administrative regulations relating to transporting and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.720 authorizes the department to issue or deny permits to hold captive cervids. KRS 150.725 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits. This administrative regulation establishes the requirements for holding and intrastate transporting cervids in [link] Kentucky.

Section 1. Definitions. (1) "Captive cervid permit" means a permit issued by the Kentucky Department of Fish and Wildlife Resources that is required to hold cervids in captivity and does not include shooting preserves as permitted under 301 KAR 2:041.
(2) "Cervid" means a member of the family Cervidae.
(3) "Conditional permit" means a temporary permit issued by the department to a facility while the facility attempts to come into compliance with this administrative regulation.
(4) "Commercial captive cervid permit" means a permit for propagation and taking of captive cervids by any legal hunting or slaughter methods, which allows the permit holder to sell, offer to sell, trade, or barter captive cervids, parts thereof, or products produced by captive cervids.
(5) "Flop tag" means a commercial plastic ear tag used to identify livestock.
(6) "KDFWR" means the Kentucky Department of Fish and Wildlife Resources.
(7) "Line post" means a post in a fence that is not a corner or end post.
(8) "Noncommercial captive cervid permit" means a permit to possess captive cervids that are not intended for sale, offered for sale, traded, or bartered.

Section 2. Fencing and Holding Requirements. (1)(a) An exterior fence shall be at least eight (8) feet above ground level for its entire length, and consist of twelve and one-half (12 1/2) gauge woven wire, fourteen and one-half (14 1/2) gauge high-tensile woven wire, wood planks, or chain link
(b) A single or double strand of barbed wire strung across the top to bring the total fence height to eight (8) feet shall be acceptable.
(c) Strands of barbed wire shall not be more than six (6) inches apart and shall not be more than five (5) inches from the top of the aforementioned fencing.
(d) Spacing between vertical wires shall not exceed six and one-half (6 1/2) inches for captive deer or species whose adult size is less than 400 pounds and twelve (12) inches for captive elk or species whose adult size is 400 pounds or more.
(e) If two (2) woven wire fences are combined, one (1) above the other, the woven wire fences shall be overlapped at least six (6) inches and firmly attached to each other at intervals no greater than three (3) feet.
(f) The fence bottoms shall be installed to provide not more than three (3) inches of ground clearance.

[6] Primary containment fences constructed after the effective date of the administrative regulation shall be a minimum of six (6) feet from the property boundary.

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(2) Right-of-way.
   (a) The fence right-of-way shall be cleared for a distance of six (6) feet on each side.
   (b) If the fence is a [an-existing] property boundary fence, the fence right-of-way shall be cleared for a distance of six (6) feet on the inside only.
   (c) If def & timber with a height greater than the distance of the fence exists on the permittee's property, it shall be felled.
   (3) (a) Fence posts shall extend a minimum of eight (8) feet above the ground and shall be of sufficient strength to maintain the fence integrity.
   (b) Pine wood posts shall be treated.
   (c) Posts shall be set to a minimum depth of three (3) feet.
   (d) T-posts shall be installed according to manufacturers' specifications.
   (4) Line posts.
   (a) Wooden line posts shall be a minimum of four (4) inches in diameter and shall not be spaced more than twenty-four (24) feet apart.
   (b) Steel pipeline posts shall:
      1. Be a minimum of two and-three-eighths (2 3/8) inches in outside diameter.
      2. Weigh a minimum of three (3) pounds per foot; and
      3. Not be spaced more than twenty-four (24) feet apart.
   (c) Metal *T* posts shall be a minimum of one and one-quarter (1.25) pounds per foot and shall be spaced no more than twenty (20) feet apart.
   (d) If the woven wire is not high tensile, there shall be a wooden or steel pipe post every sixty (60) feet.
   (5) Corner end posts.
   (a) Wooden corner and end posts shall be a minimum of five (5) inches in diameter.
   (b) Steel pipe corner and end posts shall be a minimum of two and seven-eighths (2 7/8) inches in outside diameter.
   (c) Corner and end posts of other materials shall be of sufficient strength to maintain the fence integrity and shall be approved by the department prior to installation.
   (6) Gates shall be:
      (a) Substantially constructed to meet the specifications of the fence; and
      (b) Equipped with at least one (1) latching and one (1) locking device.
   (7) Swinging water gaps and stream crossings shall be constructed to equal or exceed the standards of the fence.
   (b) These crossings shall be adequate to prevent ingress and egress during high water.
   (c) Permissible water gaps are as follows:
      1. Swinging gates constructed to match the contour of the stream supported by cable or hinge (large water gaps);
      2. Pipe with moving barrier (small water gaps);
      3. Pipe with fixed mesh barrier (smaller water gaps); and
      4. Heavy gauge woven barrier contoured to fit the gap (smaller water gaps).
   (d) If topographic, natural or other conditions exist that enable cervids to pass through, under, or over the fence, the permittee shall be required to supplement the fence with additional, stronger or higher fence posts, special grading, additional wire to increase fence height or other measures to prevent escape.
   (9) Maintenance. The fence shall be maintained in a game-proof condition at all times.

Section 3. Capture and Handling Facilities. (1) Each captive facility shall have an approved handling facility or device, such as a squeeze chute or crush, which facilitates inspection, handling or capture of an individual animal.
   (2) If a permittee's facility does not have the handling or capture facilities listed in subsection (1) of this section, alternatives such as dart guns, tranquilizers or other devices which immobilize an animal shall be approved by the department before being used.

Section 4. Tagging [and-Reedkeeping]. (1) Captive cervids shall be identified in accordance with the Kentucky Department of Agriculture CWD program requirements established in 302 KAR 20.065.
   (2) Captive cervids over six (6) months [one (1) year] old shall be uniquely identified with a plastic "tag" tag in at least one (1) ear that is clearly visible and identifiable [at a distance of fifty (50)-feet and a permanent USDA metal ear tag in one (1) ear].
   (3) (a) KDFWR may approve alternatives for plastic "tag" tags for bona fide zoos, nature centers, or similar educational institutions upon written request.
      (b) One (1) of the following may be substituted for ear tags or other approved form[s] of identification:
         (a) Up or ear tattoo; [or]
         (b) Microchip; or
         (c) Branding
   (3) (b) Alternatives to tagging may be granted to bona fide zoo, nature center, or similar educational institutions upon request.

Section 5. Ingress and Egress. (1) The permit holder [owner] shall be responsible for immediately capturing or destroying escaped animals upon discovering their escape.
   (2) If the permit holder [owner] is unable to capture an escaped animal within forty-eight (48) hours from discovering its escape, the permit holder [owner] shall report each escape to KDFWR by telephone (1-800-656-1549).
   (3) The permit holder [owner] shall then fill a written report (KDFWR, #1 Sportsmen’s Lane [Game Farm Road], Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits) within ten (10) days, describing what escaped and the reason for the escape.
   (4) The permit holder [owner] shall also report known ingress of wild cervids into the enclosure by filling a written report to KDFWR, #1 Sportsmen’s Lane [Game Farm Road], Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits.
   (5) The department or any peace officer may seize, capture, or destroy escaped animals or those that have escaped if necessary.

Section 6. Space Requirements. (1) For species whose adult weight is less than four hundred (400) pounds, each individual animal [each-one] shall be allowed at least one thousand square feet of space.
   (2) One (1) individual animal of a species whose adult weight is four hundred (400) pounds or more shall require [each-one] at least a thousand square feet of space, with each additional animal requiring an additional one thousand square feet of space.

Section 7. Prohibited Species. Except for cervids legally held prior to November 12, 2005, a captive cervid [species] permit shall not be issued for the following species:
   (1) Genus Cervus spp except Cervus elaphus nelsoni [Red deer (Cervus elaphus nelsoni)];
   (2) Genus Axis spp [Axis deer (Axis axis)];
   (3) [Pare-deer (Cervus immaculatus)];
   (4) Sambur-deer (Cervus unicolor);
   (5) Sika-deer (Cervus nippon);
   (6) Roe deer (Capreolus capreolus and Capreolus pygmaeus); and
   (7) Hybrids thereof.

Section 8. [Genetic Purity Testing]—Prior to moving or importing live elk, proof of genetic testing to ensure the purity of each animal shall be performed to prevent the introduction of red deer or hybrid nonnative species. Offering-of elk documented to be genetically pure via testing shall be exempt from genetic testing.

Section 9. Captive Cervid Permits. (1) Permit application and issuance. An application for a new or renewed captive cervid permit shall be approved within thirty (30) days of receipt of a completed application if the application and inspection provided by subsection (4) of this section shows compliance with all applicable statutes and administrative regulations. A captive cervid permit shall be valid only for the property and facility identified in the application and that is inspected as provided in Subsection (4) of this Section. A cervid shall not be moved into a new or expanded facility until the facility has been issued a captive cervid permit by the KDFWR.
   (2) Zeros and other facilities fully accredited by and in good standing with the American Zoo and Aquarium Association (AZA) shall not be required to obtain or renew a KDFWR captive cervid.
permit. Zoos and facilities certified but not accredited by the AZA shall be required to obtain and renew a KDFWR captive cervid permit.

(b) A commercial captive cervid permit shall be required for a facility owned or leased by persons wishing to sell, offer to sell, trade, or barter captive cervids. A person shall not sell, offer to sell, trade, or barter native cervids obtained from the wild.

(c) A noncommercial captive cervid permit shall be required for a person wishing to possess captive cervids, but who do not intend to sell, offer for sale, trade, or barter cervids.

(d) All wild cervids shall be removed from the facility prior to initial inspection.

(e) A permit shall identify the species of cervids being held. Before a captive cervid permit is issued, each facility shall pass an inspection to certify that the facility and documentation — including proof of ownership, stock records, and an inventory of all captive cervids — are in compliance with the applicable Kentucky Department of Agriculture regulations listed in 302 KAR 20.040, 302 KAR 20.065, and 302 KAR 20.066 and the KDFWR requirements listed in 301 KAR 2.081, 301 KAR 2.082, and this administrative regulation.

(2) Duration.

(a) A commercial captive cervid permit shall be valid for one (1) year beginning March 1 through the last day of February and may be renewed annually upon payment of the annual fee and proof of compliance with all applicable statutes and administrative regulations (the applicable Kentucky Department of Agriculture regulations listed in 302 KAR 20.040, 302 KAR 20.065, and 302 KAR 20.066 and the KDFWR requirements listed in 301 KAR 2.081, 301 KAR 2.082, and the administrative regulation).

(b) A noncommercial captive cervid permit shall be valid for three (3) years beginning March 1 through the last day of February and may be renewed every third year upon payment of the fee and proof of compliance with all applicable statutes and administrative regulations.

(3) Transfers. A captive cervid permit may be transferred if an existing and currently permitted facility is sold or leased to a person or entity who shall maintain and posses the agency of February and, in the person of the current permit holder who is transferring the permit shall be compliant with all provisions of this administrative regulation prior to transfer.

(b) Prior to transfer of the permit to a new owner or lessee, the facility shall be inspected for compliance as provided by subsection (4) of this section.

(c) The purchaser or lessee of the facility shall apply for a transfer of the existing captive cervid permit on a KDFWR captive cervid permit transfer application form. A copy of the deed indicating change of ownership or the lease agreement between the parties conducting the transfer shall be attached to a completed transfer application form and sent to KDFWR, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits within the next thirty (30) days of receipt of the transfer application.

(d) A transferred captive cervid permit may be renewed by the new owner or lessee completing a captive cervid permit application.

(3) Species. A permit shall identify the species and number of animals being held.

(4) Inspections.

(a) Before a captive cervid permit is issued, renewed, reissued, or transferred, each facility or facility expansion shall pass an inspection that certifies it is in compliance with all applicable statutes and administrative regulations.

(b) Upon completion of a facility or facility expansion, or if a facility is to be sold or otherwise transferred, the permit applicant or holder shall notify KDFWR to request an inspection which shall be conducted within thirty (30) days of receipt of the request.

(c) Facilities shall be inspected annually after issuance of a captive cervid permit to certify and document that the facility is in compliance with [the 301 KAR 2.081, 301 KAR 2.082 and] this administrative regulation.

(d) A captive cervid facility inspection form shall be completed by a KDFWR law enforcement officer, who shall then forward the completed form to KDFWR Headquarters for processing.

(5) Revocation or suspension. A person identified by a KDFWR law enforcement officer as being in violation of a Kentucky statute or administrative regulation pertaining to the holding of captive cervids shall be issued a notice of violation, in the form of a certified letter from the commissioner. A person receiving a notice of violation shall have his or her permit suspended, until which time he or she comes into compliance with all applicable statutes and administrative regulations. Failure to come into compliance with all applicable statutes and administrative regulations within sixty (60) days from the date the notice of violation is received shall result in a citation being issued. If convicted, the or her permit may be revoked and may result to the captive cervids to be immediately seized by the department. A person whose captive cervid permit is suspended or revoked shall not, without written approval from the department, transfer, expand the facility or sell, offer to sell, trade, transport, hunt or slaughter captive cervids which are housed in that facility. [Convicted of a violation of KRS Chapter 159 or the 301 KAR shall have his permit revoked.]

(6) Appeal procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(7) Expansions.

(a) A facility may be expanded at any time and shall conform to the fencing specifications described in this administrative regulation.

(b) Facility expansions shall be adjacent and connected to the current permitted facility.

(c) Cervids shall not be introduced into the expanded portion of a facility until that expansion has been inspected and approved by the department as provided in subsection (4) of this section. [New cervids shall not be moved into the facility until the facility is in compliance with this administrative regulation and has been issued a captive cervid permit by the department];

Section 9. Origin and Disposition of Captive Cervids.

(1) Cervids obtained from the wild shall only be held by a wildlife rehabilitator permitted pursuant to 301 KAR 2.075.

(2) Captive cervids shall not be released into the wild except for captive cervids obtained by a permitted wildlife rehabilitator pursuant to 301 KAR 2.075.

(3) Wild-born cervids held in captivity for rehabilitation purposes shall not: [a] be housed in the same pen or otherwise housed in direct physical contact with cervids that were born in captivity; or [b] be housed in a pen that has ever housed cervids that were born in captivity.

Section 10. [Transportation Permits. (1) Before a person may import a cervid into Kentucky from out of the state, he shall first obtain a captive cervid permit and a transportation permit from the department.]

(2) A transportation permit for cervids shall be issued, the permit shall provide documentation to the department that the animals being imported are in compliance with all applicable Kentucky Department of Agriculture health requirements. A list of these health requirements: In 302 KAR 20.040, 302 KAR 20.065, and 302 KAR 20.066.

(3) Application for transportation permits shall be made on a standard form provided by the department or by telephone from 8 A.M. to 4:30 P.M. EST, Monday through Friday (850-658-1459) provided the applicant holds a valid captive cervid permit and the Kentucky Department of Agriculture verifies that all health requirements are met. At the time of application for a transportation permit, the applicant shall provide the department with:

(a) The location of the source herd;

(b) The species being imported;

(c) The number being imported and;

(d) The date of importation.

(4) Payments for transportation permits issued by telephone shall be received within seven (7) business days.

(5) Permits shall be provided to a person who has a cervid transportation permit and a certificate of veterinary inspection in his or her possession while transporting cervids.

Section 11. Intrastate Movement of Cervids.

(1) Before a person may move a captive cervid within the state, an authorization number shall be obtained from the Kentucky Department of Agriculture pursuant to 302 KAR 20.056.
(2) A person transporting cervids shall have the authorization number issued by the Kentucky Department of Agriculture, and if applicable, the required health papers, in his or her possession while transporting cervids. [Before an authorization number is issued, the department shall require confirmation from the Kentucky Department of Agriculture that the animals are in compliance with the health requirements established in KAS 301:20-000, 301:20-030, and 301:20-060. The following information shall also be provided to the department: (a) The species of cervid being moved; (b) The location of the source herd; (c) The location where the cervids are being shipped; (d) The number of cervids being moved; and (e) Whether the source of the cervids are being Moved, including slaughter, export to another state, movement to a veterinarian or another captor facility, and (f) The date of movement.] (3) If a person needs to obtain an intrastate transportation permit to move a cervid for veterinarian care after the hours referred to in subsection (2) of this section, he may call the Division of Law Enforcement's dispatch number at 1-800-252-6378. The dispatcher shall record the information in subsection (3)(a) through (f) of this section. (4) The captive facility receiving shipment shall: (a) Be in compliance with the administrative regulations and 301-KAR-2061; (b) Be in compliance with the Department of Agriculture's regulations listed in subsection (2) of this section; and (a) Have a valid captive cervid permit. A person transporting cervids shall have both the department and the Department of Agriculture-issued authorization number in his or her possession while transporting cervids.]

Section 11, [42] Selling Cervids. A permit holder who holds a commercial captive cervid permit [permits] may sell such cervids, parts thereof, or products produced by captive cervids, if those animals were not obtained from the wild in Kentucky.

Section 12, Incorporation by Reference. (1) The following material is incorporated by reference: (a) "Standard Department Transportation Permit Application, Revised 8/03.", (b) "Captive Cervid Permit Application", 7/13/06 edition; (b) "Captive Cervid Permit Transfer Application", 7/13/06 edition; and (c) "Captive Cervid Facility Inspection Form", 7/13/06 edition. [5/24/02 edition, and (c) "Captive Cervid Permit Application - 09/06/02 edition."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Wildlife Resources, #1 Sportsman's Lane, (Game Farm Road), Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner
For Dr. JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary
APPROVED BY AGENCY: August 11, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2006, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If 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 with an interest will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 2, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400 fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of: (a) What this administrative regulation does: establishes the procedures for transporting live cervids in Kentucky.

(b) The necessity of this administrative regulation: To establish fencing and holding requirements for captive cervids to deter the spread of chronic wasting disease and other transmittable diseases to Kentucky’s wild deer and elk herds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to regulate buying, selling, or transporting wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue permits to hold and propagate captive cervids. KRS 150.740 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits. This administrative regulation establishes the requirements for holding and intra-state transporting cervids in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a basis for ensuring protection of wildlife resources by outlining the captive cervid permitting procedures, holding requirements, and intrastate transportation requirements for captive cervids within Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation: This amendment establishes procedures for expansion of captive cervid facilities and transfer of permits. This amendment sets forth a prohibition on importation of live cervids into Kentucky.

(b) The necessity of the amendment to this administrative regulation: This amendment is required by KRS 150.730, 150.735, and 150.740 to address captive cervid facility expansion and transfer of existing permits, and to prohibit importation of live cervids into Kentucky.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Persons who wish to hold, propagate, or sell captive cervids in Kentucky. Currently there are 78 permitted captive cervid facilities in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons holding, propagating, or selling captive cervids must obtain a captive cervid permit from the department. Issuance and renewal of captive cervid permits is contingent upon compliance with the fencing and holding requirements listed in this regulation. These requirements include fencing specifications, inspection by department Law Enforcement personnel, continuous enrollment in the Kentucky Department of Agriculture Chronic Wasting Disease surveillance program, and procedures for expanding or transferring a captive cervid facility. A transportation permit from the Kentucky Department of Agriculture is required to
move captive cervids within the Commonwealth.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The fee for a commercial captive cervid permit and a Non-commercial captive cervid permit is currently $100 annually.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Obtaining a commercial captive cervid permit allows a citizen to engage in commercial activities related to the holding and propagation of captive cervids. A non-commercial permit will allow licensed wildlife rehabilitators to hold non-releaseable rehabilitated deer indefinitely and will allow private citizens to hold captive-born cervids for non-commercial purposes.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost to the agency.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations; the Wildlife Division already administers captive cervid permits through their division budget. The funding source for both divisions to administer and enforce this regulation is the game and fish fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, or the change if it is an amendment: No increase in fees or funding is necessary to specifically implement this particular change in administrative regulation concerning the holding and transporting of captive cervids.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish any new fees nor does it increase existing fees.
(9) TIERING: Is being applied? Yes. Any person who wishes to hold, propagate, or sell captive cervids is required to obtain the appropriate captive cervid permit. Captive cervid facilities devoted to holding non-releaseable wild-born deer or holding captive cervids for noncommercial purposes require less departmental oversight than larger operations run for commercial purposes, such as production of meat and other products or harvest with conventional hunting weapons. Therefore, the inspection cycle is shorter for commercial captive cervid facilities than for noncommercial.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Fish and Wildlife Resources.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to regulate the buying, selling, or transportation of wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding of wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue or deny permits to hold captive cervids. KRS 150.735 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? None
(d) How much will it cost to administer this program for subsequent years? None
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(Amendment)

302 KAR 18:010. Permit for operation of amusement rides or amusement attractions in Kentucky.

RELATES TO: KRS 247.232, 247.234, 247.990
STATUTORY AUTHORITY: KRS 247.234
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(2) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations establishing [permit] requirements for the operation of amusement rides or attractions. This administrative regulation establishes the criteria for obtaining an operating permit to operate an amusement ride or attraction in the Commonwealth of Kentucky.

Section 1. Definitions. (Definition) (1) "Air inflatable" means an amusement ride or amusement attraction that is filled with air by an electric motor-driven blower. (2) "Operating permit" means a license to operate amusement rides or amusement attractions.
(3) "Chair lift or tram" means any amusement ride or amusement attraction that is operated by a series of cables and pulleys.
(4) "Climbing wall" means a portable self-belied climbing attraction.
(5) "Inspect fee" means a fee required to be paid to operate any amusement ride or amusement attraction in Kentucky.
(6) "Kentucky ride" means an amusement ride or amusement attraction that has a height requirement of forty-two (42) inches or less to ride.
(7) "Minor" means any ride which has a height requirement of forty-three (43) inches or greater to ride and is not otherwise defined in this administrative regulation.
(8) "Operating permit" means a business identification number identifying the owner of an amusement ride or amusement attraction.
(9) "Play area" means an amusement ride or amusement attraction designed for use by children on which a child can swing, walk, climb, slide and which follows a fixed path.
(10) "Pony ride" means an amusement ride or amusement attraction attached to a carousel.
(11) "Water ride" means an amusement ride or amusement attraction which uses water as a means of propulsion and includes bumper boats and water park slides which are in excess of ninety-six (96) inches at highest point of the slide.

Section 2. An operating permit shall be required for operating amusement rides or amusement attractions in the state of Kentucky and shall be renewed annually on or before January 1 of each year.

Section 3. Procedure for Obtaining an Operating Permit (1) Every owner of an amusement ride or amusement attraction wishing to operate in Kentucky shall submit to the commissioner, or his
designee, an application for an operating permit [along with a fifty ($50) dollar fee for each amusement ride or amusement attraction].

(2) The owner of the amusement ride or amusement attraction shall provide a written itinerary indicating the location of the first setup; all future operating dates and locations, including addresses; the operating period at each location, and all rides required for the initial inspections pursuant to KRS 247.234(2)(d). The itinerary shall be delivered to the department at least fourteen (14) days prior to the first scheduled setup and shall be updated in writing, within five (5) days, when cancellations or additional locations occur.

(3) The applicant shall provide proof of liability insurance in the amount of $500,000 ($500,000) per occurrence of bodily injury or death for each amusement ride or amusement attraction. The proof of insurance shall include a statement that the insurer shall not cancel the policy without thirty (30) days written notice to the commissioner. Proof of insurance shall be either the policy or a certificate of insurance issued by the insurer and shall include a listing of all amusement rides and amusement attractions insured or a statement that all amusement rides and amusement attractions operated under the supervision of the insured are covered.

(4) If the applicant's amusement rides or amusement attractions are permanently located or erected, he may, in lieu of providing proof of liability insurance, as set forth in Section 3(3) of this administrative regulation, provide proof of financial responsibility in the sum of $500,000 ($400,000) or before the date of the initial inspection of the calendar year. Proof of financial responsibility shall be shown by one of the following methods:

(a) Provide proof of liability insurance of $500,000 ($400,000) per occurrence of bodily injury or death;

(b) Submit a financial statement, certified by a licensed certified public accountant, dated no more than thirty (30) days prior to receipt of application, indicating a net worth of $500,000 ($400,000) or more in assets located in the state;

(c) Obtain a bond with a surety for $500,000 ($400,000) which names the department, or an individual or institution approved by the department, as trustee;

(d) Tender an irrevocable letter of credit to the department in the sum of $500,000 ($400,000); or

(e) Provide other proof of financial responsibility in the amount of $500,000 ($400,000), with accuracy attested to on forms incorporated by reference in Section 5 of this administrative regulation.

Section 4. Upon receipt of proper application, fees, proof of liability insurance or financial responsibility, and the required itinerary, an operating permit shall be issued in the name of the applicant. The operating permit shall be available for inspection at all times. If the permit holder is operating in multiple locations, a photocopy of the operating permit shall be accepted.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Permit Application for Mobile Rides and Attractions", 03/03;

(b) "Permit Application for Permanent Fixed Locations", 03/03;

(c) "Itinerary of Mobile Operators", 03/03;

(d) "Itinerary of Permanent Fixed Locations", 03/03; and

(e) "Certification of Proof of Financial Responsibility", 03/03.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2006 at 10:30 a.m. Eastern Time at the Commissioner's office, 32 Fountain Place, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2006, five workdays prior to the hearing, of their intent to attend. If no notification if 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 will be accepted until October 2, 2006. 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: Mark Farrow, Chief of Staff, Kentucky Department of Agriculture, 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: Establishes requirements for the operation of amusement rides or amusement attractions.

(b) The necessity of this administrative regulation: To require an operating permit and proof of financial responsibility before operating an amusement ride or amusement attraction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.234 authorizes the commissioner to promulgate regulations to establish requirements for operating amusement rides.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Protects the users of amusement rides and amusement attractions.

(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: Adds definitions and changes proof of responsibility requirements.

(b) The necessity of the amendment to this administrative regulation: Defines various types of amusement rides and specifies insurance requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 247.234 requires an operating permit and proof of financial responsibility.

(d) How the amendment will assist in the effective administration of the statutes: Defines types of rides and specifies insurance requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 515 owners of amusement rides and amusement attractions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All entities will be required to obtain an operation permit and show proof of financial responsibility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cost will be determined by the amount of insurance they obtain.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will vary, depending on the entity.

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

(a) Initial: There will be no additional cost to the agency.

(b) On a continuing basis: There will be no additional cost to the agency.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

   (c) How much will it cost to administer this program for the first year?

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

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

   Revenues (+/-):

   Expenditures (+/-):

   Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(Amendment)

302 KAR 18:020. Operation of amusement rides or amusement attractions.

RELATES TO: KRS 247.232, 247.234, 247.236, 247.990
STATUTORY AUTHORITY: KRS 247.234, 247.236
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(d) authorizes the department to promulgate administrative regulations establishing safety requirements for the operation of amusement rides or attractions. This administrative regulation establishes safety guidelines for the operation and inspection of amusement rides or attractions and establishes inspection fees.

Section 1. The operating permit shall not be valid for an amusement ride or amusement attraction for which the fifty (50) dollar fee has not been paid or for an amusement ride or amusement attraction which has not passed an initial safety inspection and paid the inspection fees set out in Section 2 in this administrative regulation. All amusement rides and amusement attractions operating in Kentucky shall bear an inspection seal. Following a safety inspection, an inspection seal shall be affixed to a permanent and accessible section of the amusement ride or amusement attraction. If the required inspection seal does not appear on the amusement ride or amusement attraction, operation of the amusement ride or amusement attraction shall be stopped until proof of a valid inspection is provided. Amusement attraction does not include hay rides, all haunted houses, mazes, and permanent climbing walls.

Section 2. Inspection fees shall be levied for each amusement ride and amusement attraction.

   (1) Air inflatables shall be fifty (50) dollars.
   (2) Pony rides shall be fifty (50) dollars.
   (3) Euro or turbo bungee shall be seventy-five (75) dollars.
   (4) Kiddie rides shall be seventy-five (75) dollars.
   (5) Play pens shall be seventy-five (75) dollars.
   (6) Climbing walls shall be seventy-five (75) dollars.
   (7) Water rides shall be seventy-five (75) dollars.
   (8) Mechanical bulls shall be seventy-five (75) dollars.
   (9) Walk throughs shall be seventy-five (75) dollars.
   (10) Tracked or trackless trains shall be $100.
   (11) Go cart tracks which include car and track shall be $125.
   (12) Major rides shall be $150.
   (13) Chair lifts or tram shall be $200.
   (14) Steel roller coaster shall be $200.
   (15) Bungee or elevator seat shall be $300
   (16) Wooden roller coaster shall be $300.

   (17) Any amusement ride or amusement attraction not listed in this section shall be $200. [All new permanent amusement rides and amusement attractions shall have all required state and local permits before the initial safety inspection can be completed].

Section 3. All new permanent amusement rides and amusement attractions shall have all required state and local permits before the initial safety inspection can be completed.

Section 4. All amusement rides and amusement attractions shall be maintained in good electrical and mechanical condition and shall be under the supervision of an operator at all times during the operation of the amusement ride or amusement attraction.

Section 5. (4) All amusement rides and amusement attractions which are potentially hazardous to spectators shall be fenced to provide protection to bystanders and riders. A barrier providing a safe distance from the outermost arc shall be present for aerial amusement rides or swings.

Section 6. (5) All power units shall be shielded to provide for public safety. An amusement ride or amusement attraction, or its power unit, shall not be located where it may present a fire hazard to adjacent buildings, exhibits, or other structures. Use of gasoline engines and storage of gasoline in or adjacent to a riding device shall be in an approved safety container and at a safe distance from the amusement ride or amusement attraction. All electrical wires leading to and from the amusement ride or amusement attraction shall be protected and insulated to prevent shock hazard and shall be properly grounded. All electrical junction boxes shall be locked or sealed.

Section 7. (6) Properly charged fire extinguishers shall be present at all amusement rides and amusement attractions.

Section 8. (7) The operator of an amusement ride or amusement attraction shall deny admittance to an amusement ride or amusement attraction to persons who appear to be under the influence of alcohol or drugs, who are not wearing foot protection, such as shoes or secured sandals, or who have in their possession any object that can be dropped from the amusement ride or amusement attraction.

Section 9. (8) To assure continued safety of amusement rides and amusement attractions, periodic safety inspections may be conducted at various times throughout the term of the permit.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Saturday, September 21, 2006 at 10 a.m. Eastern Time at the Commissioner’s office, 32 Fountain Place, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2006, five workdays prior to the
hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. 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: Mark Farrow, Chief of Staff, Kentucky Department of Agriculture, 32 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-5126, fax (502) 564-5015.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Farrow

(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes safety requirements and inspection fees for amusement rides and amusement attractions.
(b) The necessity of this administrative regulation: KRS 247.234 requires an inspection fee for amusement rides and attractions.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.234 authorizes the commissioner to promulgate regulations to establish inspection fees.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. It will assist in funding inspection services for the safety and well being of the users of amusement rides and attractions.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation. It will allow fees to be charged for inspections of amusement rides and attractions.
(b) The necessity of the amendment to this administrative regulation: This amendment will allow the department to continue inspections of amusement rides and attractions.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes inspection fees.
(d) How the amendment will assist in the effective administration of the statutes: The amendment authorizes inspection fees.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 515 owners of amusement rides and attractions.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to pay an inspection fee before they can operate an amusement ride or attraction in Kentucky.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Inspection fees range from $50 dollars to $300 dollars per ride or attraction.
(c) As a result of compliance, what benefits will accrue to the entity identified in question (3): Entities will be able to operate in Kentucky.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The agency currently performs safety inspections for which there is no fee. Rising cost of personnel and training is hampering the department in protecting the citizens of Kentucky. The additional fees will allow us to continue doing the required work. Additional cost of the safety program cannot be calculated at this time.
(b) Same as (5)(a)

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. General funds and agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. An increase in fees is necessary for the department to be able to continue the inspection program for amusement rides and attractions to ensure the safety of persons using such devices.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: Establishes a new fee.

TIERING: Is tiering applied? As all regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-)
Expenses (+/-)
Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Environmental Services
(AMENDMENT)


RELATES TO: KRS Chapter 217B
STATUTORY AUTHORITY: KRS 217B.050, 217B.530
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.515 requires that any person engaging in structural pest control be licensed. This administrative regulation establishes requirements applicable to the licensure and practice of commercial structural pest control and fumigation.

Section 1. Applicability. A person shall not engage in commercial structural pest control or fumigation without first obtaining a license from the department. A person may apply for a license in one (1) or more of the following categories:

(1) Commercial structural pest control applicator;
(2) Commercial structural pest control manager;
(3) Commercial structural fumigation applicator;
(4) Commercial structural fumigation manager; or
(5) Pesticide sales agent.

Section 2. License Application. (1) All applicants for applicator or manager licenses shall provide the following:

(a) A completed "Commercial Structural Pest Control Examination Application";
(b) A statement from a statewide law enforcement agency that the applicant has never been convicted of fraud, misrepresentation, or a felony;
(c) College transcripts if applicable; and
(d) Written verification of pesticide work experience, pursuant to KRS 217B.520.

(2) All applications for applicator or manager examinations shall be sworn to and notarized.

(3) Pursuant to KRS 217B.525(1), all applications for applicator or manager licenses shall be postmarked thirty (30) days prior to the next scheduled testing date. Any application received after the thirty (30) day deadline shall be returned.

(4) Any applicant failing to submit a complete application thirty (30) days prior to the scheduled testing date shall not be allowed to test.

(5) Any false or misleading statements made in a license application shall be grounds to deny or revoke the license.

(6) The application of any applicant convicted of a felony shall require approval by the board.

(7) The manager's license examinations shall be given the second Tuesday of each month at a location specified by the department. If the second Tuesday falls on a holiday, the examination shall be given on the following Tuesday.

(8) The manager's license examination shall be timed and shall be completed within two (2) hours.

(9) An applicant for an applicator's or manager's license shall pass both parts of the examination in a single testing session pursuant to KRS 217B 530(7).

Section 3. License Renewal. (1) Each license shall expire on June 30 of each year.

(2) Failure to submit, by July 1 of each year, a completed renewal registration form with a fee of $100 for each place of business maintained in Kentucky, shall result in the lapse of the license.

(3) Any license holder who fails to submit a completed renewal registration form and the required fee by July 1 of each year, or whose license has been suspended or revoked, shall be required to take and pass a manager or applicator licensing examination before a new license may be issued.

(4) At the time of license renewal, each company shall submit to the department a list with the following information on each employee:

(a) Name, address, and home telephone number;
(b) Social Security number; and
(c) Job title.

(5) Within thirty (30) days of the addition or termination of an employee, the company shall submit to the department the information required in subsection (4) of this section for each new or terminated employee.

Section 4. Change of Address Notices. Each license holder shall notify the department of any change of address within ten (10) days after such change has been made.

Section 5. Treatment for Wood-destroying Organisms. Unless the structure is substandard, the following standards shall apply:

(1) Treatment measures taken for the prevention or control of wood-destroying organisms shall be based upon an inspection of the structure.

(2) Termiticide treatment measures. The following standards shall apply to the treatment of all structures for the control or prevention of subterranean termite infestations:

(a) The selection and use of soil-applied liquid termicides, termite bait systems, wood treatments, or any other product used for control of wood-destroying organisms shall be in accordance with directions on the product label; and
(b) Loose cellulose debris of such size as can be raked from beneath structures shall be removed; and
(c) All accessible termite tubes except in the case where a component of a termite baiting system is affixed to termite tubes shall be removed.

(3) Termite pretreatments shall be carried out in accordance with label directions of the product used and shall not be applied at less than label rates.

(4) Any alternative termite treatment measures or new technology in termite control with less than five (5) years efficacy data shall receive prior written approval from the department before the measures and technology may be registered and used. All alternative termite treatment measures or new technology in termite treatments shall be applied in accordance with label directions.

(5) Powderpost beetle and old house borer treatment measures:

(a) Treatment for the control of powderpost beetle or old house borer infestations may be performed by spraying or painting infested and adjacent areas with a pesticide labeled for their control;
(b) Fumigation by licensed fumigators may be used to control powderpost beetle or old house borer infestations if other control measures have failed or are inappropriate.

(6) Requirements for prevention and control of wood-destroying fungi. The following are the minimum requirements for control of wood-destroying fungi in crawl space areas or other areas of buildings after the buildings have been constructed:

(a) Determine moisture content of joists, sills, and subfloor in the building. If excess dampness from the soil under a building contributes to moisture readings above twenty (20) percent, the applicator shall:
   1. Install a vapor barrier over approximately seventy (70) percent of the soil;
   2. Install additional ventilation so that there is at least one (1) square foot of vent space per 150 square feet of crawl space area without a vapor barrier;
   3. Install vents to give cross ventilation with a vapor barrier;
   4. Improve drainage;
   5. Waterproof the foundation; or
   6. Any combination of the above.

(b) The application of fungicides under the structure may be used in the control of existing decay problems under the following circumstances:

1. Spot treatment may be performed for areas with twenty (20) percent or above moisture readings.

2. Complete liquid treatment may only be performed in conjunction with paragraph (a) of this subsection if moisture readings are above twenty (20) percent in four (4) separate areas of a structure. Separate areas of a structure shall be:
   a. Left front;
   b. Right front;
   c. Left rear;
   d. Right rear;
   e. Left center; and
   f. Right center. Moisture readings shall be recorded on a graph at the time of original sale of treatment. If a structure qualifies with four (4) moisture readings, a moisture control treatment shall be performed as defined in 802 KAR 29.010(22).

Section 6. Wood-destroying Organism Reports. All persons holding a commercial structural pest control applicator's license shall be required to submit to the department a monthly report of all work done for control or prevention of wood-destroying organisms. Each office or branch office shall file a separate report. Reports shall be submitted on the "Monthly Report of Wood-Destroying Organism Treatments" form and received by the department no later than the 15th of the month following treatment. All reports shall be signed by the licensed applicator or authorized agent for that company. Upon performance of treatment for control or prevention of wood-destroying organisms, a contract shall be made between the company and the property owner. This shall be, at a minimum, a duplicate contract, one (1) copy being issued to the property owner and one (1) copy retained by the company.

Section 7. Consumer Disclosure. All contracts issued shall be
accompounded by a consumer disclosure and a graph.

Section 8. Inspections by the Department. At times as he may deem desirable, the commissioner or his authorized representative shall examine properties treated for the purpose of determining compliance with treatment standards in Section 5 of this administrative regulation. The pest control operator shall not accompany the inspector on the initial inspection unless requested by the department. If violations are found, the license holder shall be notified and given a reasonable length of time in which to abate the violations. If the license holder neglects or refuses to abate the violations, his license shall be suspended, as provided by KRS 217B.545, except for good cause shown. While his license is suspended, the license holder shall be required to restate all properties on which a violation has been found, but shall not otherwise service any current contracts or solicit any new business. He shall notify the department of the dates of all reexaminations and retreatments. When all properties previously reported in an unsatisfactory condition have been reexamined and retreated, the department shall then make the reinspections at its earliest convenience. If the department, on reinspection, finds all the properties in satisfactory condition, the suspension shall be removed. Otherwise, the license shall be permanently revoked.

Section 9. Rodent Control. Since most rodenticides are toxic to humans and domestic animals, care shall be exercised and precautionary steps taken to avoid accidental poisoning of human beings and domestic animals. Rodenticides shall be used only according to label directions.

Section 10. Fumigation. (1) Fumigation crews. For purposes of safety, at least two (2) individuals shall compose a crew for the release of any fumigant or fumigants and no fumigation operation shall be conducted unless at least two (2) individuals shall work jointly and concurrently in the release of a fumigant or fumigants. This subsection shall not apply to spot fumigation.

(2) Official notice of fumigation. Each license or certification holder, before performing general fumigation in any structure or enclosed space, shall notify in writing, the fire department and the police department having jurisdiction over the location where the fumigation operation is to be performed. The written information shall be given to each fire department and police department no later than three (3) hours prior to the time set forth in the notice for the release of the fumigant. A shorter time for filing written notice of fumigation of vessels, aircraft, boxcars, trucks or common carriers shall be permitted, and the time for the notification shall only be in advance of the fumigating operation. The notice shall in each and every case give the following information:

(a) Location of structure or enclosed space to be fumigated as well as its character and use;
(b) The fumigant to be used;
(c) The date and time of release of fumigant and approximate exposure period; and
(d) The name and day and night telephone numbers of the operator in charge.

(3) If trucks, boxcars, or other common carriers are in transit during the fumigation operation, the carrier and the receiver shall be notified that fumigation has taken place. Other than trucks, boxcars, or other common carriers, this section shall not apply to spot fumigation.

(4) Structures to be vacant. Human beings or domestic animals shall not occupy the structure to be fumigated, or any part or parts thereof, during the period of fumigation. In addition, structures or enclosed spaces which are physically joined to or in contact with the structure to be fumigated shall not be occupied by human beings or domestic animals during the period of fumigation. It shall be the duty of the operator in charge to make a careful examination of all parts of the structure to be fumigated and structures or enclosed spaces physically joined to or in contact with the structure, to verify that no human beings or domestic animals are remaining in the structure and that all necessary precautions have been taken to safeguard the lives and health of all persons.

(5) Notice of warning shall be served upon the occupants of the structure or enclosed space to be fumigated no later than three (3) hours in advance of any fumigation operation by leaving the notice with a responsible adult person or by attaching the notice in a conspicuous manner on the entrance or entrances of the structures or enclosed spaces occupied by human beings.

(6) The operator in charge shall make a personal inspection and examination of the structure or enclosed space to be fumigated.

(7) Danger signs. Prior to releasing the fumigant, warning signs shall be posted at the ground level on all doors or entrances as follows:

<table>
<thead>
<tr>
<th>(Skull and Crossbones)</th>
<th>Danger</th>
<th>(Name of Fumigant)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fumigation with</td>
<td>Deadly Poison</td>
</tr>
<tr>
<td></td>
<td>(Name of Fumigant)</td>
<td>All persons are warned to keep away</td>
</tr>
</tbody>
</table>

Name of Fumigator:
Address:
Telephone:
Operator in Charge:
Day Phone:
Night Phone:
The signs shall be printed in indelible red ink or insoluble paint on a white background. The words "danger" and "deadly poison" shall be in block letters two (2) inches high and all other letters shall be in proportion.

(8) Final fumigating inspection. Immediately before the fumigant is to be released, the operator in charge shall then make a final inspection and shall ascertain the following:

(a) That all preparations have been completed;
(b) That no human beings or domestic animals are present within the structure or enclosed space to be fumigated, or in any adjacent structures or enclosed spaces that were to be vacated because of danger from the fumigation operation;
(c) That no open fires or open flames, pilot lights or oil lamps are burning;
(d) That all personnel engaged in the fumigation operation are outside the structure or enclosed space to be fumigated unless proper application of the fumigant requires personnel to be within the enclosed space at the time of application; and
(e) That all doors, windows, and all other means of access have been locked, barred, or guarded. All doors or other entrances which can be opened from the outside shall be locked.

(9) Guards and watchmen. During the period of fumigation and until the structure has been ventilated and declared safe, a capable, alert watchman or guard, or watchmen and guards, shall remain on duty at the structure or enclosed space being fumigated. One (1) guard or watchman shall be considered sufficient for each fumigation operation unless, in the judgment of the operator in charge, the conditions which circumstances necessitate additional guards or watchmen. It shall be the duty of said individual(s) to prevent the entrance of unauthorized personnel into the structure or enclosed space during the exposure period and while the structure or enclosed space is being ventilated after the exposure period. Spot fumigation shall not require a guard or watchman, unless deemed necessary in the judgment of the operator in charge. If a warning agent is used, the above subsection shall not apply unless specified by the label.

(10) Declaring structure or enclosed space fumigated safe for reoccupancy. The operator in charge shall not permit or allow any unauthorized person to enter the structure or enclosed space fumigated until he has ascertained that it is safe for human occupancy.

(11) Spot fumigation. Spot fumigation may be performed by persons under the full-time supervision of a person certified to apply fumigants. Spot fumigation may be performed without the posting of guards as required for general fumigation. This shall not relieve the operator in charge of the duty to comply with all other safety precautions and requirements.

(12) The following procedures shall not be considered fumigation operations if nonrestricted use pesticides are used according to label directions:

(a) Aerosol dispersions; and
(b) Any equipment or device which produces a fog, smoke, or
mist.

Section 11. Structural Pest Control and Fumigation Licenses. (1) Persons holding general pest and wood-destroying organism or fumigation licenses may continue to do business in those categories of pest control for which they are licensed under KRS 2175.515(1)(b). A general pest and wood-destroying organism or fumigation certification shall not be a manager’s or applicant’s license and shall not entitle the holder to engage in business in all the categories that a manager or applicant may engage.

(2) Commercial structural pest control or fumigation licenses shall be renewed by June 30 of each year and shall be subject to all the terms and conditions of other licenses issued under this administrative regulation. These licenses may be modified, suspended, or revoked, for the same reasons, and using the same procedures, that a manager’s or applicant’s license may be modified, suspended, or revoked. These license holders shall meet the application standards and obey the requirements for contracting, recordkeeping, and reporting, established by KRS 2173.150 and by 302 KAR 29:020.

(3) A person holding a general pest and wood-destroying organism or fumigation license shall be, by reason of KRS 2173.180(3), certified to purchase or use restricted-use pesticides. This does not relieve them from obtaining certification under the federal law as contained in the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 11. The certification of persons certified under KRS 2173.180(3) may be modified, suspended, or revoked pursuant to 302 KAR 29:020. To maintain certification, persons certified pursuant to KRS 2173.180(3) shall meet the requirements of 302 KAR 29:070.

Section 12. Pesticide Application in Schools. Each school district shall be required to implement an integrated pest management program with a primary goal of controlling dangerous and destructive pests with the judicious use of pesticides. An Integrated pest management program shall include the following: (1) Advance notification of pesticide use; (a) In the event a pesticide is to be applied in or around a school, an advance notification of pesticide use shall be given or sent at least twenty-four (24) hours prior to the pesticide application to all staff members, health professionals assigned to provide services at the school, and parents or guardians of students enrolled in the school. Such notice shall not be given if the pesticide use is to take place during a time the school is not in session, or the students and staff members are not present on the school grounds at least forty-eight (48) hours after the pesticide application. (At the start of each semester or school year segment a verifiable notice shall be sent or given to all staff members, health professionals, and parents or guardians of school children concerning twenty-four (24)-hour advance notification of pesticide application). (b) A master copy of the notification shall be maintained by the school in a file marked IPM for twenty-four (24) months after the notice is issued and shall be subject to inspection upon request by the Division of Environmental Services personnel (Maintain a registry of those requesting advance notification).

(2) The notification shall include the following: (a) The [an estimated] date of possible pesticide application. If special circumstances arise and the advance notice is not provided as required, such as the emergency application of pesticides to control organisms that pose an immediate health threat or that may be disruptive to a normal learning environment, the school shall provide the notice as soon as possible. In this situation, the notice shall explain the reasons why advance notice was not provided and what pesticide was applied. (b) A description of the general location of the pesticide application; (c) [The route-scheduled service]. A description of pests treated [announced], the brand name of the pesticides applied, including the [a] list of active ingredients, the [and] pesticide application method; and (d) A telephone number that parents and staff can use to contact the school for more information.

(3) If special circumstances arise and advance notice can not be provided as required, such as the emergency application of pesticides to control organisms that pose an immediate health threat, the school shall provide the notice as soon as possible. In this situation, the notice shall explain the reasons why advance notice was not provided and shall also include the information required in subsection 2(a) through (d) of this section.

(4) The certified applicator, if other than an employee of the school, shall furnish all items recited in the notification section of subsection 2 of this section a minimum of twenty-four (24) hours prior to application of a pesticide, allowing the school ample time to make notification, if applicable.

(5) [39] Qualifications for pesticide applicators. Persons who apply pesticides in schools shall be certified under Category 7(a), General Pest and Wood-destroying Organisms, and Category 7(b), Integrated Pest Management, to apply pesticides. Applicants currently holding a Category 7(a) certification on the effective date of this administrative regulation shall receive their Category 7(b) certification without additional examination.

(6) [43] Exemptions. This policy shall not apply to application of the following types of pesticides:

(a) Germicides, disinfectants, bactericides, sanitizing agents, water purifiers, and swimming pool chemicals used in normal cleaning activities; (b) Personal insect repellents; (c) Human or animal ectoparasite control products administered by qualified health professionals or veterinarians; and (d) Manufactured paste or gel bait insecticides placed in areas where humans or pets do not have reasonable access to the bait.

Section 13. Pesticide Application for Health Care Centers. Qualifications. Pesticide applicators who apply pesticides in health care centers shall be certified in 7(a), General Pest and Wood-destroying Organisms, and 7(b), Integrated Pest Management, to apply pesticides. Applicants currently holding a Category 7(a) certification on the effective date of this administrative regulation shall receive their Category 7(b) certification without additional examination.

Section 14. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.

Section 15. Incorporation by Reference (1) The following material is incorporated by reference: (a) 'Commercial Structural Pest Control Examination Application'; and (b) 'Monthly Report of Wood-Destroying Organism Treatments' form.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: July 24, 2006
FILED WITH LRC: July 24, 2006 at 5 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2006 at 10 a.m. Eastern Time at 32 Fountain Place, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2006, 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard 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 2, 2006. 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, General Counsel, 32 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-5126,
VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Farrow
(1) Provide a brief summary of:
(a) What this administrative regulation does: Requires advance notice of pesticide application in schools.
(b) The necessity of this administrative regulation: To better define the notice requirement for pesticide applications in schools.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishes requirements applicable to licensure and practice of commercial structural pest control fumigation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. It will better protect the health and well being of students and school staff.
(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: Instead of a blanket notice before each semester, notice will be required 24 hours before application of pesticides.
(b) The necessity of the amendment to this administrative regulation: To better protect the health and well being of students and school staff.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 217B requires the department to regulate pesticide applications.
(d) How the amendment will assist in the effective administration of the statutes: The regulation better defines and streamlines the notification provision of the existing law.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All institutions for teaching children, including but not limited to, preschools, child day care centers, and primary and secondary schools will be affected.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be required to provide prior notice of pesticide applications, explain in the notice several items of information, maintain a copy of the notification, and have the notices available for inspection by department employees.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is already a notice requirement and this amendment will not add to the cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The students and staff of the entities will be better protected by this amendment.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: $0, as we already require an IPM program for schools.
(b) On a continuing basis: $0, same $0.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General and federal funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are required.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or increased.
(9) TIERING: Is tiering applied? Tiering is not applied, as all affected entities will have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All institutions for teaching children including, but not limited to, preschools, kindergartens, child day care centers, primary and secondary schools will be impacted by this regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B, 302 KAR 29:050.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. There are no revenues and expenses will be negligible if any.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
(c) How much will it cost to administer this program for the first year? Negligible.
(d) How much will it cost to administer this program for subsequent years? Negligible.

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

Revenues (+/-):
Expenditures (+/-):

Other Explanation: Schools are now required to provide advance notification. The current requirement is unwieldy and ambiguous. The proposed regulation will better streamline and define the regulatory requirements and will lessen the paperwork for schools.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(AMENDMENT)


RELATES TO: KRS Chapters 196, 197, 439, 532
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, and 532.260 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations concerning the use of approved monitoring devices for inmate release to home incarceration and for the supervision of offenders on probation and parole. The administrative regulation incorporates by reference the policies and procedures governing the use of approved monitoring devices for inmate release to home incarceration and for the supervision of offenders on probation and parole.

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for home incarceration using an approved monitoring device July 28, 2006, June 1, 2006" are incorporated by reference. These policies and procedures include: 25.12 Home Incarceration and Monitoring of Inmates (Amended 7/28/06/09/04/06)
27-15-02 Curfew and Monitoring (Amended 6/9/05)
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 279 E. Main Street (Lawrenceburg Road), P.O. Box 2400, Frankfurt, Kentucky 40602-2400, (502) 564-4276(602) 564-3024; facsimile (502) 564-5037(602) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
VOLUME 33, NUMBER 3 - SEPTEMBER 1, 2006

APPROVED BY AGENCY: July 10, 2006
FILED WITH LRC: July 28, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2006 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40624-2400, phone (502) 564-4001 ext. 336 or 333, fax (502) 564-5229.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Dunn, (502) 564-2220

1. Provide a brief summary of:
   a. What this administrative regulation does: This regulation incorporates by reference policies and procedures that govern operations of the Kentucky Department of Corrections and are used by department employees and inmates released early to home incarceration by the department to understand responsibilities.
   b. The necessity of this administrative regulation: The Department of Corrections is required to establish regulations concerning early release and electronic monitoring pursuant to KRS 532.260.
   c. How this administrative regulation conforms to the content of the authorizing statutes: The regulation revises policies and procedures that govern the early release of inmates and electronic monitoring as required by KRS 532.260.
   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 the duties and responsibilities of their jobs and to inmates concerning responsibilities and requirements of early release.
   e. If this is an amendment to existing administrative regulation, provide a brief summary of:
      a. How the amendment will change this existing administrative regulation: The amendment updates current practices and implements procedures to accomplish changes made by the Legislature to KRS 532.260.
      b. The necessity of the amendment to this administrative regulation: The amendment is needed to revise policies to comply with statutory changes.
      c. How the amendment conforms to the content of the authorizing statutes: The statutes permit the commissioner to promulgate regulations in order to implement and manage early release of inmates with electronic monitoring.
      d. How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning changes in the eligibility requirements for electronic monitoring most of which pertain to changes in the statute.
      e. How much revenue will this administrative regulation generate for the state or local government (including counties, fire departments, or school districts) for the first full year of the administrative regulation is to be in effect.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 532.260.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Corrections, County Jails.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 532.260.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year of the administrative regulation is to be in effect.

The program is designed to save the state revenue by releasing inmates up to 90 days early before their serve out date. The savings to the De-
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Department of Corrections is estimated to be $2,173,300 by not housing these inmates in a facility. In addition, the inmates may further reduce the cost of the program by paying the monitoring fee while they are on the program. It is expected that the DOC will pay approximately $3,000,000 less to the jails because of fewer inmate days from early release.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is believed that the state revenue savings will equal or exceed the savings of the first year.

(c) How much will it cost to administer this program for the first year? $1,363,000

(d) How much will it cost to administer this program for subsequent years? $1,545,000 is the expected cost for the second year and personnel cost will increase each year with increments and other associated costs.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

EDUCATION CABINET
Board of Education
Department of Education
(Resolution)

702 KAR 5:010. Pupil transportation: technical assistance and monitoring.

RELATES TO: KRS 155.160, 157.370, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.370
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 and 189.540 require the Kentucky Board of Education to promulgate administrative regulations relating to the physical welfare and safety of public school children, the transportation of children to and from school, and the operation of school buses; and KRS 157.370 references the method of calculating transportation costs for the state public school funding program. This administrative regulation establishes guidelines and procedures whereby the Department of Education may offer direct assistance to the school districts in these areas: service to the pupils, school bus safety, and economy of operation.

Section 1. The Department of Education may make safety inspections of school buses and special type vehicles either owned by the board or contracted to the board, used to transport pupils to and from school, held in reserve as substitutes for this purpose, or proposed for this purpose. If any of these school buses or special type vehicles are found to be in an unsafe condition, the department may prohibit further use for the transportation of pupils until the conditions causing them to be unsafe shall have been corrected.

Section 2. The Department of Education may make inspections of bus driver training records. If a school bus driver training record is found to be out of compliance, the department may decertify a driver whose training records are out of compliance until proper corrections are made.

Section 3. All vehicles used for the transportation of pupils shall meet the minimum safety standards for Kentucky school buses of the same model year except as provided in 702 KAR 5:060, Section 6(2), and 702 KAR 5:130, Sections 1 and 2.

Section 4. The Department of Education may make a district pupil transportation system survey or audit in any school district providing transportation for its pupils, or that is planning to provide transportation for its pupils.

Section 5. The Department of Education may require the superintendent of a school district to prepare or cause to be prepared, pupil transportation maps, bus route descriptions, and reports necessary for calculating the district's entitlement under the Support Education Excellence in Kentucky Program.

Section 6. The Department of Education shall be responsible for the training and approval of state school bus inspectors.

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

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chair
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 10, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 28, 2006 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify the agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kyna Koch

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes guidelines and procedures whereby the Department of Education may offer direct assistance to the local school district in service to pupils, school bus safety and economy of operation.
(b) The necessity of this administrative regulation: This administrative regulation provides clarifications to ensure all school districts provide safe school bus transportation.
(c) How this administrative regulation conforms to the content of the authorizing statute: This statute authorizes and requires the promulgating of administrative regulations relating to the physical welfare and safety of public school children, the transportation of such children to and from school, and the operation of school buses.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the specific duties to ensure the safe transportation of children.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will conform it to 702 KAR 5:060 and 702 KAR 5:130.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been amended since 1993 and is being amended to correct an outdated provision.
(c) How the amendment conforms to the content of the authorizing statute: This amendment does not affect the conformity of the administrative regulation to statute.
(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarification to en-
sure all school districts provide safe school bus transportation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. All local school districts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendment to this administrative regulation will have no effect on local school districts. The amendment is merely a technical clean up.

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No expense required.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation amendment corrects a discrepancy in existing regulations.

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

(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this administrative regulation. This administrative regulation does not relate to any fees.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160; 157.370; 189.540.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expense to school districts.

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

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

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

EDUCATION CABINET
Board of Education
Department of Education
(Amendment)

702 KAR 8:100. Appeal procedures for nutrition and health services (school and community nutrition) programs.

RELATES TO: KRS 156.070(5); 156.160(1)(f); 7 C.F.R. 210.18(q); 215.11, 220.13(f)(2); 225.13, 226.6(x); 42 U.S.C. 1761, 1765(e), 1772

STATUTORY AUTHORITY: KRS 156.029(7); 156.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(5) requires the Kentucky Board of Education to promulgate administrative regulations governing the operation of programs within the Department of Education. This administrative regulation establishes the appeals procedure for a sponsor of a federal nutrition program.

Section 1. Actions that May be Appealed: (1) A school food authority that sponsors the National School Lunch Program, the Special Milk Program or the School Breakfast Program may appeal the following adverse actions:

(a) Denial of all or part of a claim for reimbursement arising from administrative or follow-up review activity; or

(b) Withholding payment arising from administrative or follow-up review activity.

(2) A sponsor of the Child and Adult Care Food Program, including an independent center or sponsoring organization on behalf of a facility under its jurisdiction, and responsible principals and responsible individuals, may appeal the following adverse actions:

(a) Denial of a new or renewing institution's application for participation;

(b) Denial of an application submitted by a sponsoring organization on behalf of a facility or site;

(c) Notice of proposed termination of participation of an Institution or facility or site;

(d) Suspension of an Institution's agreement;

(e) Denial of an institution's application for start-up payments;

(f) Denial of an advance payment;

(g) Denial of all or part of a claim for reimbursement (except for a late claim);

(h) Notice of proposed disqualification of a responsible principal or a responsible individual;

(i) Recovery of all or part of an advance in excess of the claim for the applicable period;

(j) Decision by the Department of Education not to forward to Food and Nutrition Service (FNS) an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim;

(k) Demand for the remittance of an overpayment; or

(l) Any other action of the Department of Education affecting the participation of an Institution in the program or the Institution's claim for reimbursement.

(3) A program sponsor or a food service management company (FSMC) participating in the Summer Food Service Program for Children may appeal the following adverse actions:

(a) Denial of an application for participation;

(b) Denial of a sponsor's request for an advance payment;

(c) Denial of a sponsor's claim for reimbursement (except for a late claim under 7 C.F.R. 226.9(6));

(d) Refusal of a state agency to forward to FNS an exception request for payment of a late claim or a request for an upward adjustment to a claim;

(e) A claim against a sponsor for remittance of a payment;

(f) Termination of the sponsor or a site;

(g) Denial of a sponsor's application for a site; or

(h) Denial of a food service management company's application for a registration or the revocation of a food service management company's registration.
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action of the Division of Nutrition and Health Services [School-and Community-Nutrition] (the "division") may appeal the action by filing a timely request for an appeal. The request shall be filed with the Director, Division of Nutrition and Health Services [School-and Community-Nutrition], Department of Education, 2545 Lawrenceburg Road, Frankfort, Kentucky 40601.

(2) The request shall be in writing and clearly state:
(a) The name and address of the program sponsor;
(b) The name and title of the person who signed the request;
(c) The adverse action being appealed, the basis of the appeal, and the relief or remedy sought;
(d) The date of the letter or written communication from the division notifying the program sponsor of the proposed adverse action, and the name and title of the division official who signed the letter or communication; and
(e) If a hearing before a hearing officer is desired, the desire for a hearing

(3) An appellant program sponsor may submit written information in support of its position when it files its appeal and request for a hearing. Except as provided in paragraph (b) of this subsection, it may also submit additional written information to the designated hearing officer up to thirty (30) calendar days after receipt of the division notice of adverse action.

(b) If the appellant program sponsor is the Summer Food Service Program, it may submit additional written information in support of its position up to seven (7) calendar days after filing the appeal and request for a hearing.

Section 3 Appeal Timelines. (1) The request for appeal shall be postmarked or received by the division prior to midnight of the fifteenth calendar day (or tenth working day if the Summer Food Service Program) after receipt of the notice of adverse action. If the 15th day (or tenth working day if the Summer Food Service Program) falls on a Saturday, Sunday, or federal legal holiday, the request shall be timely if it is postmarked or received the next day which is not a Saturday, Sunday, or federal legal holiday.

(2) The division shall acknowledge receipt of the request for an appeal within ten (10) days of its receipt of the request.

(3) Any information on which the division's action was based shall be available for inspection by the institution and the responsible principal and responsible individual from the date of receipt of the request for an appeal.

Section 4. Appeal Procedures. (1) The division shall forward any request for appeal to the Director, Division of Administrative Hearings, Office of the Attorney General. The request for appeal shall be accompanied by a copy of the notice of adverse action sent to the division [School-and Community-Nutrition] and by the document on which the request is based.

(2) During the appeal process, a program sponsor, responsible principal, responsible individual or food service management company shall:
(a) Self-represent;
(b) Be represented by legal counsel; or
(c) Be represented by another person.

(3) The administrative hearing procedures of KRS Chapter 13B shall apply.

(4) If a hearing is requested:
(a) Except as provided in subsection (7) of this section, the institution, the responsible principal and responsible individual, and the Department of Education shall be provided with at least ten (10) days advance notice of the time and place of the hearing;
(b) If the institution's representative or the responsible principal and responsible individual or their representative fail to appear at the scheduled hearing, the right to a personal appearance before the designated hearing officer shall be waived unless the designated hearing officer agrees to reschedule the hearing; and
(c) A representative of the state agency shall be allowed to attend the hearing to respond to the testimony of the institution and the responsible principal and responsible individual and to answer questions posed by the designated hearing officer.

(5) The designated hearing officer shall make a determination based solely on the information provided by the state agency, the institution, and the responsible principal and responsible individual and based on federal and state laws, administrative regulations, and policies and procedures governing the program.

(6) Except as provided in subsection (7) of this section, within sixty (60) days of the Department of Education's receipt of the request for an appeal, or ten (10) days if the matter under appeal is a suspension of participation, the designated hearing officer shall inform the Department of Education, the institution's executive director and chairman of the board of directors, and the responsible principal and responsible individual of the outcome of the appeal.

(7) If the appellant is the Summer Food Service Program:
(a) The notice of the time and date of the hearing shall be provided at least five (5) days prior to the hearing, with the notice sent by certified mail, return receipt requested;
(b) The hearing shall be held within fourteen (14) days of the date of receipt of the request for an appeal and hearing, but not before the appellant's written documentation is received;
(c) Within five (5) working days after the appellant's hearing, or within five (5) working days after receipt of written documentation if no hearing is to be held, the designated hearing officer shall make a determination based on a full review of the administrative record, and inform the appellant of the outcome of the appeal by certified mail, return receipt requested, and
(d) The Department of Education's action shall remain in effect during the appeal process except if it is an appeal of termination. If it is an appeal of termination:

1. Participating Summer Food Service Program sponsors and alternates have the opportunity to continue participation in the program during the appeal, except as provided by subparagraph 3 of this paragraph;
2. Reimbursement shall be paid for meals served during the appeal process if the appeal results in the overturning of the Department of Education's decision; and
3. Continued program operation shall not be allowed if the Department of Education's action is based on imminent danger to the health or welfare of children. If the Summer Food Service Program sponsor or site has been terminated for this reason, the Department of Education shall specify this in its notice of adverse action. Pursuant to 7 C.F.R. 210.16(q)(3), 220.13(f)(2), 225.13(b)(2) and 226.6(k)(5), the decision of the hearing officer shall be the final administrative determination.

(8) If an application to participate in the program was denied, the determination of the hearing officer shall either sustain the denial or shall direct that the appellant be approved for limited or full participation.

(9) If all or part of a claim for reimbursement, start-up payment, advance payment, or demand for refund of any overpayment was denied, the determination of the hearing officer shall either sustain the action under appeal or specify the amount of the claim for reimbursement, start-up payment, advance payment, or refund of overpayment to be paid.

(10) If an appellant's participation in the program was terminated, the determination of the hearing officer shall either sustain the termination or shall direct that the appellant be permitted to continue participation in the program.

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 10, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 28, 2006 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Meri Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the public hearing or written
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedure for appealing adverse actions taken against sponsors of the Special Milk Program, School Breakfast Program, National School Lunch Program, Child and Adult Care Food Program and Summer Food Service program for Children.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of the National School Lunch Act of 1946, the Child Nutrition Act of 1966, the Agricultural Risk Protection Act of 2000 and the Grain Standards and Warehouse Improvement Act of 2000, as amended.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specific appeal process for sponsors of the programs listed above, including what actions may be appealed, how to file an appeal, and the timelines for appeals, hearings and decisions.

(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 expands the grounds for appeal, allowing appeals for denial of payment of a late claim for reimbursement and it inserts the current name of the pertinent division at the Kentucky Department of Education.
(b) The necessity of the amendment to this administrative regulation: Required by a decision of the federal cognizant agency.
(c) How the amendment conforms to the content of the authorizing statute: Not applicable with this amendment.
(d) How the amendment will assist in the effective administration of the statutes: It clarifies that sponsors may appeal denial of payment of a late claim for reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Sponsors of the programs listed in 1(a) above, including school districts, child care centers, private and parochial schools, and faith-based organizations.

(4) Provide an analysis of how the entities identified in question 3 will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Sponsors will be allowed to appeal the denial of a late claim for reimbursement.

(a) List the actions that each of the regulated entities identified in question 3 will have to take to comply with this administrative regulation or amendment: None
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question 3: No additional cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question 3: Providers will now be able to appeal the denial of reimbursement of a late claim.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There will be no additional costs to the agency to implement this administrative regulation. We do not expect that the amendment will increase the number of appeals.
(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding granted to the state agency that can be used for this purpose.

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

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

(9) TIERING: Is tiering appropriate? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation 7 C.F.R. 210.8(b)(1); 215.10(b); 220.11(b); 225.9(d)(6); and 226.10(a).
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expense to school districts.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost.
(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

EDUCATION CABINET
Board of Education
Department of Education
(Addendum)

703 KAR 5:020. The formula for determining school accountability.

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 for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet or exceed their assistance line. This administrative regulation establishes a single assessment system with two (2) accountability dimensions: one (1) addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
Section 1. Assessments. (1) The Kentucky Department of Education shall administer the Kentucky Core Content Tests and norm-referenced tests. The Kentucky Core Content Tests shall be administered as follows:

(a) Reading at grades 4, 7, and 10;
(b) Mathematics at grades 5, 6, and 11;
(c) Science at grades 4, 7, and 11;
(d) Social studies at grades 5, 8, and 11;
(e) Arts and humanities at grades 5, 8, and 11;
(f) Practical living/vocational studies at grades 5, 8, and 10;
(g) Writing at grades 4, 7, and 12;
(h) Writing portfolio at grades 4, 7, and 12; and

(i) Alternate portfolio at 4, 8, and the last anticipated year of attendance at the school level.

(2) The norm-referenced tests shall be administered in reading/language arts and mathematics at the end of primary, grade 6, and grade 9.

(3) In order to comply with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., the Kentucky Department of Education shall augment the norm-referenced test to appropriately measure Kentucky's core content in reading and mathematics at grades three (3) and six (6). At grades five (5) and eight (8) an additional augmented norm-referenced test shall be administered in reading, and at grades four (4) and seven (7) an additional augmented norm-referenced test shall be administered in mathematics.

(4) Required participation in the National Assessment of Educational Progress, if a school is satisfied 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 four (4) and eight (8), the school shall participate fully.

Section 2. Academic and Nonacademic Index Calculations. (1) For purposes of calculating a school's academic indices, the school shall be held accountable based on an aggregate average of the performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades. The points assigned to students scoring at each student achievement level and sublevel for purposes of computing the academic indices for a particular content area shall include:

(a) Nonperformance - if a total open-response raw score of less than one (1), and multiple-choice total raw score that is less than chance performance and the score converts to less than medium novice, it shall be assigned a score of zero. For the writing or alternate portfolio, a blank or incomplete response shall be assigned a score of zero;

(b) Medium novice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of thirteen (13);

(c) High novice (reading, mathematics, science, and social studies) shall be assigned a score of twenty-six (26);

(d) Low apprentice (reading, mathematics, science, and social studies) shall be assigned a score of forty (40);

(e) Medium apprentice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of sixty (60);

(f) High apprentice (reading, mathematics, science, and social studies) shall be assigned a score of eighty (80);

(g) Proficient in all content areas shall be assigned a score of 100, or distinguished in all content areas shall be assigned a score of 140.

(2) For all content areas except writing, the scores derived from the Kentucky Core Content Test shall be based on a scoring method that assigns sixty-seven (67) percent of the weight of the score from open-response items and thirty-three (33) percent of the weight from multiple-choice items. The writing score shall be based on the writing prompt and the writing portfolio.

(3) The values for attendance rate and successful transition to adult life rate shall be the actual percentage reported. The values entered into formula calculations for retention rate and dropout rate shall be 100 minus the actual percentage calculated. Nonacademic data for a particular assessment year shall be calculated using the data from the previous school year. Nonacademic data shall be based on all grades within a school building generating appropriate data as follows:

(a) Attendance, primary through grade twelve (12);
(b) Retention rates, grades four (4) through twelve (12);
(c) Dropout rates, grades seven (7) through twelve (12), and

(d) Successful transition to adult life for the graduating students.

(4) Scores from alternate portfolios shall be included in the academic indices so that the data from an alternate portfolio completed by a student eligible to participate with an alternate portfolio contributes the same weight to the academic component of the accountability index as would the data for a student participating in the regular components of the assessment program at the elementary, middle, or high school levels. The same requirement shall be applied to calculations required by "No Child Left Behind Act of 2001" 20 U.S.C. 6301 et seq.

Section 3. Components of the Accountability Index and Weights. (1) The accountability index shall consist of two (2) components. Component one (1) consists of academic indices and the nonacademic index. Component two (2) shall be an index created from a national norm-reference test (NRT). Component one (1) shall comprise ninety-five (95) percent of the total index. Component two (2) shall comprise five (5) percent of the index.

(2) The accountability index shall be rounded to the nearest tenth on the accountability scale.

(3) Computing the academic index for each of the content areas of writing, reading, mathematics, science, social studies, arts and humanities, and practical living and vocational studies shall be based on the average of student scores as described in Section 2(1) of this administrative regulation. Component one (1) of the accountability index shall be calculated according to the following weights:

(a) Elementary school (grades one - primary - grade five 5)

<table>
<thead>
<tr>
<th>Content Area</th>
<th>Component One (without NRT)</th>
<th>Component One and Two (with NRT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading</td>
<td>20%</td>
<td>19.00%</td>
</tr>
<tr>
<td>Mathematics</td>
<td>20%</td>
<td>19.00%</td>
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<td>14.25%</td>
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<td>14.25%</td>
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<td>On-Demand Prompt 3%</td>
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<td>Arts and Humanities</td>
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<td>4.75%</td>
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<tr>
<td>Practical Living and Vocational Studies</td>
<td>5%</td>
<td>4.75%</td>
</tr>
<tr>
<td>Nonacademic Index (5%)</td>
<td></td>
<td></td>
</tr>
<tr>
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</tr>
<tr>
<td>Retention Rate</td>
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<td>0.95%</td>
</tr>
<tr>
<td>National-Norm-referenced Test (Not Applicable)</td>
<td>5%</td>
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</tr>
<tr>
<td>Total</td>
<td>100%</td>
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</tr>
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</table>

(b) Middle school (grades 6 - 8)

<table>
<thead>
<tr>
<th>Content Area</th>
<th>Component One (without NRT)</th>
<th>Component One and Two (with NRT)</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>Mathematics</td>
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<tr>
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<tr>
<td>Social studies</td>
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<td>14.25%</td>
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<tr>
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<tr>
<td>Writing Portfolio</td>
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<tr>
<td>Arts and Humanities</td>
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<td>7.125%</td>
</tr>
<tr>
<td>Practical Living and Vocational Studies</td>
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<td>7.125%</td>
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Nonacademic Index (10%)

<table>
<thead>
<tr>
<th>Category</th>
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<td>(c) High school (grades 9 - 12)</td>
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Content Area

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<tbody>
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<td>Mathematics</td>
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<td>Social studies</td>
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<tr>
<td>Writing</td>
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<table>
<thead>
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<tbody>
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<td>Practical Living and Vocational Studies</td>
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Nonacademic Index (10%)

<table>
<thead>
<tr>
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<th>Percentage</th>
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(4) The academic index for each content area and the nonacademic index shall be determined by summing the indices as described in this section.

(5) Component one (1) of the accountability index shall be calculated by aggregating the data from all of the students in the school.

(6) Component two (2) of the accountability index shall be derived from the national norm-referenced assessment as follows:

(a) Student performance standards comparable to those used in component one (1) and described in Section 2 of this administrative regulation shall be established by the end of the year 2000.

(b) Scores shall be associated with each performance level as described in Section 2 of this administrative regulation; and

(c) The component two (2) index shall be based on the average of the scores.

Section 4. Schools Not Conforming to the Standard Grade Configuration. (1) For the Kentucky Core Content Test, if a school does not have grades 4 and 5 at the elementary level, grades seven (7) and eight (8) at the middle school, or grades ten (10), eleven (11), and twelve (12) at the high school, the school shall be combined with the school or schools having the missing grade(s) its students previously attended or would subsequently attend, forming a single school accountability unit, for both state and federal school accountability purposes.

(2) A school that does not contain a grade at which the national norm-referenced test is administered shall have its accountability index calculated using only the weights specified as component one (1) of the index in Section 3 of this administrative regulation. Schools that have more than 1 grade at which the national norm-referenced test is administered shall have those grades combined to form the basis for component two (2) of the calculations described in Section 3 of this administrative regulation.

(3) A school or school district may request a waiver of the requirements of subsections (1) and (2) of this section or from the normal configuration of schools (elementary, middle, or high school) from the Kentucky Board of Education specifying other combinations of schools and assessment data if all students in an accountability grade are included, and all schools are accountable for all content areas assessed. A condition for the granting of a waiver shall be that each affected school and school district shall waive in writing its right to make the school configuration for which it sought a waiver the basis of a subsequent appeal of a school’s classification. A waiver request shall be received by the Kentucky Department of Education by June 30 of the year prior to the bimennium for which the waiver is requested.

Section 5. Schools Having More than One (1) Accountability Level. If a school has more than one (1) accountability level, the school’s accountability index shall be the average of the academic and nonacademic data for the school. This average accountability index shall be applied toward making adequate yearly progress decisions.

Section 6. School Service Area Reconfigurations. (1) If as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, less than eighty (80) percent of a school’s student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (0.8), the school shall be considered a reconfigured school.

(2) Schools reconfigured after the 1998-1999 school year shall be assigned a baseline calculated from the 1998-1999 and 1999-2000 aggregate district level data for the appropriate level (elementary, middle, or high school).

(3) A school district shall notify the Department of Education of any school that is planning for the upcoming school year to be a reconfigured school as provided in this administrative regulation by June 30 prior to the beginning of the school year in which the reconfiguration is to occur.

(a) For the purpose of assigning a school classification of meets goal, progressing, or in need of assistance, a school that is considered a reconfigured school in either year of a bimennium after 2000 on which accountability decisions are based shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions (elementary, middle, or high school) were to be applied at the district level. In the alternative, a school district may submit to the Department of Education a plan for reconstituting baseline data taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in both baseline and growth index calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall not be implemented until the affected schools have a complete bimennium of data to be considered in the growth calculations. A condition for acceptance of the plan shall be that each affected school and school district shall waive in writing its right to make the plan the basis of a subsequent appeal of a school’s classification.

(b) To determine whether a reconfigured school meets adequate yearly progress for the first three (3) years the school is reconfigured, the determination shall be made based on whether the school meets the annual measurable objectives established in reading and mathematics and has a participation rate for the school and its subpopulations of sufficient size identified in 20 U.S.C. 6301 et seq., of at least ninety-five (95) percent. Beginning with the fourth year of the school’s reconfiguration, the school shall meet all requirements for making adequate yearly progress as provided in Section 10(2) of this administrative regulation.

(c) In the alternative to paragraph (b) of the subsection, a school district may submit to the Department of Education a plan for reconstituting data necessary to determine whether a reconfigured school has met all requirements for making adequate yearly progress taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate.
and appropriately include all student data in annual calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is required from the Kentucky Board of Education as provided in this administrative regulation. This alternative shall be implemented the year of the reconfiguration.

(4) A school that has contained more than one (1) level (elementary, middle, or high school) and is reconfigured by removing an entire level of the accountability grades may request that the portion of the school remaining stable be considered within the accountability system being its established historical data.

(5) A school in transition because of a new building or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require the tracking of individual student data. This request shall require the approval of each affected school council, or the principal, if a school does not have a council, and the local board of education upon the recommendation of the superintendent.

Section 7. Accountability Procedures. (1) To establish expected levels of growth for each school, a straight line shall be drawn from a school’s baseline minus one (1) standard error of measurement established in the 1998-1999 and 1999-2000 biennium to the state goal of a growth accountability index of 100 minus one (1) standard error of measurement by 2014. There shall be five (5) points of school recognition. These points shall be determined from the baseline data (school years 1998-1999 and 1999-2000) so that at least ten (10) percent of the schools fall below the first point of recognition and the fifth recognition point shall be set at 100 on the accountability index scale, with the remaining points being established at equal whole number intervals between the high and the low.

Section 8. School Classifications Recognizing Growth. (1) To determine if a school is classified as meets goal, progressing, or in need of assistance, the school’s growth accountability index for a biennium shall be compared to the corresponding goal point and assistance point.

(2) A school shall be classified as meets goal if the school’s growth accountability index meets or exceeds its goal point and meets the dropout and novice reduction requirements of this section.

(3) To receive rewards under the provisions of this administrative regulation, a school shall have a biennial dropout rate less than or equal to five and three-tenths (5.3) percent, or a dropout rate that is at least one-half (1/2) of one (1) percent lower than its dropout rate of the previous biennium. A school shall not receive rewards if its dropout rate exceeds six (6) percent. If a school is reconfigured for a biennium, the school shall receive the aggregate district dropout rate for the biennium.

(4) To receive rewards under this administrative regulation, a school shall reduce the percent of novices on a schedule so that by the target biennium, the school shall have five (5) percent or less of its students scoring in the novice range of performance. The percent of novices shall be calculated to be reflective of the weights in Section 3 of this administrative regulation. The schedule shall be calculated by subtracting five (5) from the baseline percent novice and dividing this value by seven (7). The maximum allowable percent novice for each biennium shall be calculated as follows:

(a) Year 2002 = baseline percent novice minus the required novice reduction factor;
(b) Year 2004 = baseline percent novice minus the required novice reduction factor multiplied by two (2);
(c) Year 2006 = baseline percent novice minus the required novice reduction factor multiplied by three (3);
(d) Year 2008 = baseline percent novice minus the required novice reduction factor multiplied by four (4);
(e) Year 2010 = baseline percent novice minus the required novice reduction factor multiplied by five (5);
(f) Year 2012 = baseline percent novice minus the required novice reduction factor multiplied by six (6); and
(g) Year 2014 = baseline percent novice minus the required novice reduction factor multiplied by seven (7).

(5) A school shall be classified as a progressing school if the school’s growth accountability index falls below its goal point and meets or exceeds its assistance point. A progressing school shall obtain an accountability index greater than that which it obtained in the previous biennium to earn a reward and other recognition as a progressing school.

(6) A school shall be classified as in need of assistance school if the school’s growth accountability index falls below its assistance point. A school classified as being in need of assistance shall be eligible to apply for Commonwealth school improvement funds and may be subject to a school audit.

(7) In 2002, the highest scoring five (5) percent of all schools shall be designated as Commonwealth pace-setter schools if they have met or exceeded the fourth point of recognition and if they meet the dropout rate and novice reduction requirements of this section. This calculation shall be based on the total accountability index of the school regardless of whether one (1), multiple, or no grades at which the non-referenced test is administered are included. If not otherwise earning rewards in recognition for growth, a Commonwealth pace-setter school shall receive one (1) share of rewards. In addition, to be classified as a pace-setter school beginning with the biennium ending in 2004, a school shall not have declined in both of the two (2) previous biennia. The rewards that may be due a school for having passed a higher point of recognition shall be given in addition to this amount.

Section 9. Reward Amounts. (1) There shall be two (2) levels of rewards for growth. A school classified as meets goal in accordance with Section 8(2) of this administrative regulation shall earn three (3) shares of rewards. A school classified as progressing in accordance with Section 8(5) of this administrative regulation shall earn one-half (1/2) share of rewards.

(2) A special one (1) time reward amount shall be distributed to schools as they meet or exceed school recognition points. These schools shall receive one (1) share of rewards and other forms of recognition as determined by the Kentucky Board of Education for meeting or exceeding each school recognition point.

(3) If a school passes two (2) or more of the school recognition points, in one (1) biennium, the reward shall be cumulative. A school shall be awarded these amounts only one (1) time for meeting or passing each point. A school earning this reward and subsequently falling below a recognition point shall not earn the reward for passing the point again.

(4) A school shall earn a recognition point reward based on whether its baseline falls and shall not receive rewards for meeting or exceeding school recognition points below its baseline index.

(5) The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed one and three-fourths (1 3/4) percent of the amount of funds paid to certified personnel within Kentucky’s public schools during the last year of the accountability cycle. The total number of shares earned shall be divided into the amount determined pursuant to the subsection to determine the per share reward amount; however, a reward share shall not exceed $2000. A reward share shall be distributed to a school that meets the requirements for rewards as specified in Section 6 of this administrative regulation. The number of shares earned shall be multiplied by the total number of certified staff, as provided in KRS 158.6455 and subsection (6) of this section, to determine the final reward amount, as follows:

(a) Meets goal. number of certified full-time equivalent (FTE) staff times three (3) shares;
(b) Progressing: number of certified full-time equivalent (FTE) staff times one-half (1/2) share;
(c) Pass one (1) school recognition point: number of certified full-time equivalent (FTE) staff times one (1) share; and
(d) Pace setter: number of certified full-time equivalent (FTE) staff times one (1) share.

(6) Beginning with rewards issued at the close of the 1999-2000 school year, a school shall earn rewards for use in the school based on the number of certified staff assigned to the school at the close of the biennium. A reward amount shall be determined based
on the number of verified certified staff assigned to the school or combinations of schools earning the reward. A reward amount for part-time and itinerant staff shall be calculated based on the proportion of time spent in the school.

Section 10. School Accountability Requirements of the "No Child Left Behind Act of 2001". (1) For the purpose of determining whether a school 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) and measure the percentage of students meeting or exceeding the state's proficient level of academic achievement on the state assessments. The starting points for each accountability level shall be the percentage of students at or above the proficient level who are in the school at the 20th percentile in the state, based on enrollment, among all schools ranked by the percentage of students at or above the proficient level.

(2) For purposes of determining adequate yearly progress, a school shall be held accountable based on an aggregated average of the performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades and producing school level accountability statistics including:

(a) Percent proficient and above in reading and mathematics;
(b) School classification criteria as described in subsection (5)(a) of this section;
(c) Graduation rates; and,
(d) Participation rates.

(3) The aggregated average shall be computed based on the most recent two (2) years of student performance data in reading and mathematics from the Kentucky Core Content Test if the school does not meet an annual measurable objective based on the current year's 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 school has met adequate yearly progress as measured against the annual measurable objectives established in Section 10(11) of this administrative regulation.

(5) Meeting adequate yearly progress. Schools shall be determined to have made adequate yearly progress for a school year if:

(a) The school and all subpopulations of sufficient size identified in 20 U.S.C. 6301 et seq. met district annual measurable objectives in both reading and mathematics or met the conditions described as "safe harbor" in 703 KAR 5:001;
(b) The school had a classification of any category of progressing or meets goal in the CATS binomial or midpoint classification, whichever occurred more recently, at the elementary and middle school accountability 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 as defined in 703 KAR 5:001;
(c) The school demonstrated progress or met the annual goal for graduation rate as defined in 703 KAR 5:001; and
(d) The school had a participation rate 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 shall be computed as an average of the most recent two (2) years for the current year or, as an average of the most recent two (2) or three (3) years, to reach ninety-five (95) percent.

(6) No child left behind (NCLB) improvement school determination. A school shall be identified as a "NCLB improvement school" if for two (2) consecutive years the school fails to make adequate yearly progress in the same content area as defined in 703 KAR 5:001 - reading or mathematics.

(7) Reward or recognition. For a school meeting adequate yearly progress for two (2) consecutive years in both reading and mathematics, it shall receive a reward or recognition from the Department of Education as determined on an annual basis.

(8) Before identifying a school as a no child left behind improvement school and implementing consequences required by 20 U.S.C. 6301 et seq., the local school district shall provide the school with an opportunity to review the school-level data on which the proposed identification is based. No later than thirty (30) days after the district provides the school with the opportunity to review such school-level data, the district shall make public a final determination on the status of the school with respect to the identification.

(9) Confidence intervals. A school shall be considered to have met the annual measurable objectives in reading or mathematics if:

(a) The percent of students scoring proficient or above in a school meets or exceeds the annual measurable objective in reading or mathematics;
(b) The annual measurable objective fails within the ninety-nine (99) percent confidence interval placed around the school's percent of students proficient and above. The confidence interval shall also be based upon the same most recent two (2) years if the current year's 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 be based upon the most recent two (2) or three (3) years of student performance data upon which the aggregated average is based.

(10) Students included in participation rates. A student enrolled in a Kentucky public school on the first day of the testing window for the school shall be included in the calculation of the participation rates for the total population and for each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(11) Students included in determining whether a school meets annual measurable objectives. Beginning with data from the 2003-2004 school year, a student enrolled in a school for a full academic year shall be included in the school calculation of the percent of students performing at the proficient level or above in both reading and mathematics for purposes of federal accountability decisions.

(12) Annual Measurable Objectives in Reading and Mathematics - 2003 through 2014. The annual measurable objectives for reading and mathematics shall be as follows:

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<th>Year</th>
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<th>Middle Reading</th>
<th>Middle Math</th>
<th>Primary-08 Reading</th>
<th>Primary-08 Math</th>
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</table>
Section 11. No Child Left Behind School Consequences. (1) Tier 1 consequences for no child left behind improvement schools. If a Title I school is identified as a no child left behind (NCLB) improvement school, the local school district shall provide parental notification with explanations, required in 20 U.S.C. 6301 et seq., including information that all students enrolled in the school have the option to transfer, at the district's expense, to another public school operated and selected by the local school district that has not been identified as a school in improvement. The NCLB improvement school shall also write or revise its school plan.

(2) Tier 2 consequences for NCLB improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of one (1) full year after being identified as an NCLB improvement school, the local district shall take corrective action as required by 20 U.S.C. 6301 et seq., and continue to provide services mandated in Section 11(1) of this administrative regulation.

(3) Tier 3 consequences for NCLB improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of two (2) full years after being identified as an NCLB improvement school and the local district shall take corrective action as required by 20 U.S.C. 6301 et seq. and consistent with all relevant Kentucky statutes, and continue to provide services required in Section 11(1) and (2) of this administrative regulation.

(4) Tier 4 consequences for NCLB no child left behind improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of three (3) full years after being identified, the local district shall plan for alternative schools in the district and make plans to provide alternative schooling as defined in 703 KAR 5.001 for two (2) consecutive school years after the identification, the school shall not longer be identified as a NCLB improvement school and the school shall not be subject to federal consequences.

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

GENE WILHOIT, Commissioner KEITH TRAVIS, Chair APPROVED BY AGENCY: August 2, 2006 FILED WITH LRC: August 2, 2006 at 4 p.m. PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 29, 2006 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, or 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: 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, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a statewide assessment system with 2 accountability dimensions; one addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal accountability and requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq. (NCLB).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for the statewide assessment programs as required by KRS 158.6453, KRS 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq. including types of assessments to be administered, grades and content areas to be assessed, weights of each assessment, and details of how schools will be held accountable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the implementation of the statewide assessment and accountability programs which will be applied in all schools as required by KRS 158.6453, KRS 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment provides specifics on how Kentucky will become compliant with the assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., and implements flexibility recently offered by the U.S. Department of Education.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to specify the requirements of schools in becoming compliant with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements of the assessment and accountability programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to schools specifics for the implementation of the requirements of the statewide assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will impact at the state level...
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725 KAR 2:015. Services and facilities for public libraries.


STATUTORY AUTHORITY: KRS 171.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.027 establishes The Public Library Facilities Construction Fund to assist local public libraries and other governing bodies in debt service payments relating to library construction or renovation projects. KRS 171.027 requires the Department for Libraries and Archives to promulgate administrative regulations to administer the fund, specifically: (1) the establishment of the application process; (2) the criteria for project selection; (3) the minimum level of local participation required, and (4) the process to be followed in the construction of facilities. This administrative regulation: (1) defines terms; (2) states general requirements for eligibility; (3) establishes application procedures for the applicant and the department, (4) establishes the construction process; and (5) provides for the payment of funds.

Section 1. Definitions. (1) "Application packet" means the packet of materials KDLA sends to each applicant library, containing:

(a) A copy of the MOA currently being used;
(b) A copy of this administrative regulation;
(c) The criteria used to determine minimum matching requirements; and
(d) Other relevant material needed for completion of an application for assistance.

(2) "Architect" is defined at KRS 323.010(1) and (2); licensing is required at KRS 323.020.

(3) "Available local revenue" means, as determined by the public library and approved by KDLA, the annual local funds available to retire debt, not expected to decrease the level of normal and customary programs and services offered by the public library.

(4) "Award of assistance" means the annual grant payment awarded, for a period of not more than twenty (20) years, to a local public library to retire debt incurred for the purpose of constructing or renovating a local public library facility.

(5) "Construction coordinator" means a specialized consultant employed by KDLA for the purpose of coordinating and consulting with Kentucky public libraries on construction issues.

(6) "Engineer" is defined at KRS 322.010(3).

(7) "KDLA" means the Kentucky Department for Libraries and Archives.

(8) "Local board" means:

(a) The local public library board of trustees established under KRS 173.040, 173.340, 173.480, or 173.725; or
(b) The official local governing body responsible for the operations of a local public library.

(9) "MOA" or "memorandum of agreement" means the written, long-term agreement between KDLA and a library for awarding a PLFC Fund Grant to retire debt incurred to finance a library facility construction or renovation project, including each term and condition agreed to and stipulated by each party, on a form developed by KDLA.

(10) "PLFC fund grant" means the annual grant awarded by KDLA, over a period of not more than twenty (20) years, to a local public library or governing body for the purpose of assisting in the retirement of debt incurred for the purpose of constructing or renovating local public library facilities.

(11) "Public library" is defined at KRS 171.125(2).

(12) "Punch list" means an inventory of work that remains to be completed and signed by the owner, the architect, and the contractor, to show that they agree the items on the list represent the work that remains to be done.

(13) "State librarian" means the official described at KRS 171.130.

Section 2. Stipulations and Conditions. A public library building shall be bound by the following:

(1) General stipulations governing a public service or public

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Department for Libraries and Archives
Field Services Division
(Amendment)
building construction, including:
(a) Uniform State Building Code, KRS 198B.050, as administered by the Kentucky Department for Housing, Buildings and Construction, KRS 198B.020;
(b) Fire Prevention and Protection Code, KRS 227.200 to 227.530;
(c) The Americans With Disabilities Act of 1990, 42 U.S.C. 12101; and
(d) Workers' Compensation and Unemployment Insurance, KRS Chapters 341 and 342;
(e) State Prevailing Wage Law, KRS 337.505 through 337.550; and
(f) The Civil Rights Act, KRS Chapter 344.
(2) For a library applying for assistance from the PLFC fund, the following KDLA requirements:
(a) A building or renovation shall be planned, and construction shall be supervised by an architect or engineer approved by KDLA.
(b) A contract for an architectural or construction service shall be in the standard form used by the American Institute of Architects, as amended by KDLA. An architect shall maintain professional liability insurance, including errors and omission insurance, in accordance with the limits set forth in the construction grant contract.
(c) Each plan or site selected for construction shall be approved by KDLA.
(d) The site and facility shall be owned by the local board. KDLA shall approve an alternative facility ownership or use arrangement if it is determined by KDLA to be in the best interest of the library, the local board, and the population served by that library.
An applicant shall request KDLA approval for a proposed site prior to purchasing the site. A letter indicating approval or disapproval shall be sent to the local board by KDLA. Property not approved shall be ineligible for construction funds. A building owned by a local county or city government shall be approved if an authoritative letter is obtained establishing the local board's right of possession and use of the building for at least twenty (20) years.
(e) Purchase of an existing building for conversion to library use shall qualify for aid if:
1. A structural engineer or other competent authority certifies that the building is structurally sound and suitable for conversion;
2. The existing building is of open construction, supportive of a functionally flexible library; and
3. The service and economic considerations for conversion outweigh the service and economic considerations for construction of a new building.
(f) A library building constructed using KDLA funds shall:
1. Remain open to the public; and
(g) An application shall include:
1. A written building program; and
2. A current long-range plan.
(h) A project shall:
1. Demonstrate a plan for future growth; and
2. Meet KDLA minimum standards for a public library facility; or
b. Be included in a countywide master facility plan designed to meet KDLA minimum standards within a reasonable time, with reference to the Kentucky State Data Center's ten (10) year median population projection.
(i) A local board shall provide free countywide library services, without discrimination, to the citizens of the county in which the public library facility is located.
(j) A library receiving an award of assistance shall not reapply until the current construction project is complete and officially closed out by KDLA.

Section 3. Application for Assistance. (1) Each fall preceding a fiscal year that funding is available through the PLFC fund, KDLA shall distribute an "Intent to Apply" notice to every public library in the Commonwealth. A library intending to apply for assistance beginning in the following fiscal year shall notify KDLA on forms developed by the department.
(2) KDLA shall send the following to each public library requesting fund assistance:
(a) The amount of funds available for PLFC grants; and
(b) An application packet.
(3) An incomplete or late application shall not be considered.
The state librarian may allow reconsideration on the basis of documented, unusual circumstance.

Section 4. Review of Applications for Assistance Under the PLFC Fund. (1) KDLA shall establish a construction review committee to:
(a) Review applications; and
(b) Recommend to the state librarian the applicants considered eligible for a PLFC fund award.
(2) The committee shall be composed of five (5) members, as follows:
(a) The state librarian shall appoint two (2) Field Services Division consultants, to serve a term of one (1) year [two (2) years, except:
1. One (1) member shall serve an initial term of one (1)-year; and
2. One (1) member shall serve an initial term of two (2) years].
(b) The Director of Field Services shall appoint two (2) members each of whom has been involved, within the previous eight (8) years, in the completion of a building project valued at $500,000. Each member shall be:
1. Library director;
2. Trustee; or
3. Staff member.
(c) The construction coordinator shall serve:
1. For the duration of his or her position; and
2. As nonvoting chair of the committee.
(d) The Director of Field Services shall appoint a replacement for a member unable to complete his or her term.
(3) KDLA shall establish:
(a) Procedures for the construction review committee; and
(b) A ranking system for the PLFC fund award.
(4) The criteria for award shall be:
(a) Need:
1. Assessment of existing facilities and service;
2. Analysis of population data;
3. Minimum square footage;
4. Available local revenue;
5. General policies established for state assistance under the Public Library Services Improvement and Equalization Fund; and
5. Other relevant standards.
(b) Planning: the extent to which the proposed facility addresses the applicant library's long range plan for services.
(c) Partnerships: the extent to which the project strengthens the applicant library's relationship with other organizations in the service area.
(d) Project budget: The extent to which the applicant library's project budget addresses anticipated expenditures, including at least five (5) percent for contingency.
(e) Local match, if required: the extent to which the local board of a county with adequate income to qualify for matching assistance under the PLFC fund shows funds available to match the state award and to complete the project.
(f) Sustainability: the extent to which the local board can realistically afford to operate the proposed project.
(g) Previous assistance: priority shall be given to a library that:
1. Has facilities that do not meet minimum standards; and
2. Has not received:
   a. A major construction grant; or
   b. A PLFC fund award.
(h) Completeness of application: the extent to which the applicant library has fairly and accurately provided required information on the application form.
(5) The state librarian shall take one (1) of the following actions, based on the recommendation of the construction review committee:
(a) Approve the application and offer an award of assistance;
(b) Approve the application at a reduced level or based upon funds availability;
(c) Approve the application with restrictive conditions; or
(d) Reject the application.
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(6) KDLA shall notify each applicant, in writing, of the result of the state librarian’s action approving or rejecting the application.

Section 5. Informal Appeals. (1) An applicant aggrieved by a decision of the state librarian may file an informal appeal with KDLA.

(2) Procedures.
(a) The local board shall notify KDLA of the intent to appeal;
1. Within twenty-one (21) days of the date of the letter of notification;
2. In writing;
3. Stating the basis for appeal; and
4. Mailed to the state librarian, by registered mail, return receipt requested.
(b) Upon receipt of a notice of intent to appeal, the state librarian shall:
1. Convene a board of appeals composed of three (3) members, one (1) of each having been nominated by:
   a. The State Advisory Council on Libraries;
   b. The Kentucky Library Association; and
   c. The Kentucky Library Trustees Association; and
2. Designate one (1) of the appointees to serve as chair.
(c) The appeals board shall notify the appellant and the state librarian, in writing, of the date and place of the hearing. Within twenty-one (21) calendar days after the hearing the appeals board shall notify the state librarian and the local board of its recommendation.
(d) The state librarian shall consider the recommendation of the appeals board and shall, within fourteen (14) calendar days of receipt, render a final decision.
(e) A party aggrieved by a final decision of the state librarian may file a formal appeal in accordance with KRS Chapter 13B.

Section 6. Award of Assistance. (1) The state librarian shall notify each eligible library of:
(a) The amount of assistance it will receive; and
(b) The requirements to be met in order to accept the award.
(2) A public library shall not receive more than twenty-five (25) percent of the total PLFC funding available during that biennium. KDLA may make an award to a public library as long as the total of all awards of assistance do not exceed the amount of PLFC funding that is available. An award of assistance is subject to availability of funds appropriated for this purpose in each biennium.

(3) Within thirty (30) days of receipt of notice of the award, the public library board shall notify KDLA of acceptance or rejection of the award of assistance. A public library not responding within thirty (30) days shall be declared ineligible and the award of assistance withdrawn and redistributed to the eligible recipients. In extenuating circumstances and upon written request within the original thirty (30) day period, the state librarian may grant a single thirty (30) day extension.

Section 7. Procedures After Approval. (1) After a local board has received a letter of approval, the local board shall:
(a) Establish a building committee, the meetings of which shall be attended by the regional librarian and the construction coordinator, when possible; and
(b) Complete the following:
1. An agreed-upon MOA between KDLA and the local board, signed by both;
2. The building committee membership list and schedule of meeting dates;
3. Holding company contract, if needed; and
4. Construction plans approved by KDLA; and
5. Other documentation as specified by KDLA.
(2) Files for the project shall be kept at KDLA as directed in the appropriate public record retention schedule.
(3) Funds for projects receiving assistance shall be distributed according to a payment and reporting schedule contained in the MOA between KDLA and the local board.

Section 8. Construction Procedures. (1) The local board shall retain an attorney to act as advisor on contracts and other legal matters during the term of the construction project.

(2) The project architect shall submit, to the U.S. Department of Labor, a list of construction trades that may be involved in order to establish the wage rate which the contractor shall be required to pay.

(3) The architect shall proceed with the working drawings and specifications for submission to KDLA for final approval by KDLA before the project is advertised for bids.
(4) When KDLA has approved the working drawings, the plans shall be completed and advertised publicly for construction bids. The advertisement shall include notice that a builder's risk policy shall be required as part of the construction contract.

(5) The bid opening date shall be coordinated with KDLA and the local library.
(6) The contract shall be awarded to the "lowest and best" responsible bidder, as mutually determined by the local board, the architect, and KDLA.

(7) The architect shall notify the construction coordinator at least one (1) week before the building is ready for inspection and punch list. The completed building shall be inspected by KDLA's designated official. A KDLA representative may make site visits during the project term.
(8) A copy of each change order, invoice, and documentation of payment made, shall be kept by the library in accordance with applicable records schedules and submitted to the department when requested (filed with KDLA at the time of report submission).

(9) KDLA, upon request of the local board, assist in selecting and ordering the furniture and equipment for the project in accordance with state law governing state agency advertisement, bidding, and purchase from a state price contract. A prospective vendor shall furnish a bid and performance bond for each purchase over $50,000.

(10) Each payment to a contractor or supplier shall be made promptly, upon approval by the architect. Until the construction contract is substantially performed, the board shall withhold ten (10) percent as retainer. Upon substantial completion of the work, the retainer may be reduced to five (5) percent if certified by the architect and approved by the board. If, after receipt of the punchlist, a reason for reduction of the retainer is certified, in writing, by the architect and approved by the board, the retainer may be reduced below five (5) percent. The minimum lump sum amount shall be twice the estimated cost to correct the punch list items.

Section 9. Expenditure of Funds. (1) Funds from a PLFC grant shall be used only to pay a cost directly related to the construction or renovation of a local public library facility.

(2) A cost may include:
(a) Site acquisition;
(b) Architectural and engineering services;
(c) Financial and legal services, and
d) Equipment.

(3) Site acquisition cost shall be limited to the lesser of:
(a) The actual cost of acquiring a site; or
(b) The fair market value of the site as determined by qualified appraisal approved by KDLA.

(4) Construction cost shall:
(a) Include fixed or movable equipment; and
(b) Not include consumable supplies.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for State Public Library Facilities Construction Funds", 3/01; and
(b) "Notification of Intent to Apply for Public Library Facilities Construction Funds", 1/00.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Libraries and Archives, 300 Coffee Tree Road, Box 537, Frankfort, Kentucky 40602-0537, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES A. NELSON, State Librarian and Commissioner
JUDITH GIBBONS, Director, Field Services Division
APPROVED BY AGENCY: August 15, 2006
FILED WITH LRC: August 15, 2006 at noon - 906 -
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2006, at 10 a.m., at the Kentucky Department for Libraries Board Room, 300 Coffee Tree Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This 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 2, 2006. 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: Chris Bischoff, Construction Coordinator, 300 Coffee Tree Rd., Frankfort, Kentucky 40601, phone (502) 564-8300 ext. 213, fax (502) 564-5773.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Bischoff, Construction Coordinator

(1) Provide a brief summary of:
(a) What this administrative regulation does: It clarifies specific portions of the existing regulation impacting our administration of the program and the flexibility for applications seeking state assistance under the program.
(b) The necessity of this administrative regulation: required under KRS 171.291(c)
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the department to promulgate regulations relating to the application process; the criteria and method for selection projects for assistance; the level of local participation and the process to be followed in the construction or renovation of local public library facilities.
(d) How the administrative regulation currently assists or will assist in the effective administration of the state assistance under the Public Library Facilities Construction Fund.

(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: It allows for libraries currently receiving assistance to reapply before their project is closed out; it changes the terms of Field Services Division members on the selection committee and makes the construction coordinator a voting member of the committee; it removes the condition that consideration will be made on the basis of a library having previously received an award of assistance; it removes the limit on what percentage of the total funding can be awarded to a single project; and, it allows records of the project to be kept by the library unless requested by the department.
(b) The necessity of the amendment to this administrative regulation: this corrects specific portions of the regulation which we have learned are not germane to effective administration of the program.
(c) How the amendment conforms to the content of the authorizing statutes: See (1) (c) above.
(d) How the amendment will assist in the effective administration of the state assistance: it makes the program more flexible; more beneficial to potential applicants; and, less burdensome to administer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Legally established public libraries in 118 counties.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Any legally established public library seeking to assistance under KRS 171.291(c) will need to file and "Intent to Apply" form in the deadlines prescribed; if those forms are accepted, they will be asked to submit an application for a Grant on the forms prescribed and submit the application in the timeframe established for this step. If they are awarded a grant, they will need to establish a specific account for the project and document all actions taken to complete the process, but under this amendment, they will not have to send copies to KDEA unless requested.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only costs will be determined by the project budget and that will vary for each project.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive financial assistance from the state which will be used to retire debt incurred to complete the project.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No new costs will be incurred.
(b) On a continuing basis: It should lower costs to local libraries and no new costs will be incurred by the department.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds appropriated by the legislature.
(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 fees are established or increased.

(6) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering is not applied because funding is open to all legally established public libraries in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
   2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Legally established public libraries in 118 counties.
   3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.291(c).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The only impact will be in the construction projects where the public library is engaged. The impact is estimated to be $600,000 of state expenditure this year. The only impacts will be positive as it reduces a paperwork burden and makes the regulations more flexible to allow for more projects to be done in certain counties.

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

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

7. How much will it cost to administer this program for the first year? There will be little impact on the cost of administering the regulation even though there may be more projects for our public library consultant to monitor, but there will be no new personnel or other significant budget issues. This is an ongoing program for the agency which has been in place for many years.

8. How much will it cost to administer this program for subsequent years? Same as in (c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative
811 KAR 1:005. Definitions.

RELATES TO: KRS 230.215, 230.260(1) [(4), (9)]
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3) [(4), (9)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(2) authorize the Authority [commission] to promulgate administrative regulations prescribing the [regulate] conditions under which horse racing shall be conducted in Kentucky. The function of this administrative regulation is to define the terms used in §111 KAR Chapter 1 [the commission's administrative regulations].

Section 1. Definitions. (1) "Added money" means the amount of money, exclusive of trophy, added into a stakes by an association, a sponsor, a state-bred program, or other fund, and which is in addition to those moneys gathered by nomination, entry, sustaining and other fees paid by the horseman.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled in January 1 of the year in which the horse was foaled.

(3) "Also eligible" means:
(a) An eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline; or
(b) The next preferred nonqualifier for the finals, or consolation from a set of elimination trials, which becomes eligible in the event a finalist is scratched by the judges for a rule violation or is otherwise eligible if written race conditions permit.

(4) "Appeal" means a request for the Authority to investigate, consider, and review any decision or ruling of a judge or official of a meeting to deal withElapsed, penalties, interpretations of the rules, or other questions dealing with the conduct of a race.

(5) "ARCI" means the Association of Racing Commission International.

(6) "Arrears" means all sums due by a licensee as reflected by his or her account with the horseman's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to these administrative regulations.

(7) "Association" is defined by KRS 230.210(1).

(8) "Authority" means the Kentucky Horse Racing Authority.

(9) "Bleeder" means a horse known to have bled internally or from its nostrils during a workout or race.

(10) "Bleeder list" means a tabulation of all bleeders to be maintained by the Authority.

(11) "Breakage" means the net pool minus payoff.

(12) "Breeder" means the owner of the dam of a horse at the time the horse was foaled.

(13) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with these administrative regulations.

(14) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformance with §111 KAR 1.035.

(15) "Classified race" means a race in which entries are selected by the racing secretary on the basis of ability or past performance.

(16) "Coggins test" means a medical procedure used to determine if a horse is positive for Equine Infectious Anemia.

(17) "Conditioned race" means an overnight race in which eligibility is determined according to specified conditions, which may include the following:
(a) Age;
(b) Sex;
(c) Earnings;
(d) Number of starts; or
(e) Positions of finishes.

(18) "Conditions" means qualifications that determine a horse's...
eligibility to be entered in a race.

(19) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes (also see "entry").

(20) "Dash" means a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which a horse shall start in all dashes with positions drawn for each dash, and the number of purse distributions or payouts awarded shall not exceed the number of starters in the dash.

(21) "Day" means a twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight (also known as a calendar day.)

(22) "Dead heat" means a finish of a race in which the roses of two or more horses reach the finish line at the same time.

(23) "Declarator" means the naming of a particular horse as a starter in a particular race.

(24) "Disqualification" means that a: (a) Person shall not be allowed to start or drive a horse in a race; or (b) Horse shall not be allowed to start in a race.

(25) "Draw" means the process of assigning post positions and the process of selecting horses in a manner to ensure compliance with the requirements governing racing.

(26) "Driver" means a person who is licensed to drive a horse in a race.

(27) "Early closing race" means a race for a definite amount of money in which entries close at least six (6) weeks prior to the race.

(28) "Electronic ability" means a computer-generated eligibility certificate that records a horse's racing statistics.

(29) "Elimination heat" means an individual heat of a race in which the contestants must qualify for a final heat.

(30) "Entry" means the act of nominating a horse for a race.

(31) "Exhibition race" means a race on which no pari-mutuel wagering is permitted.

(32) "Extended pari-mutuel meetings" means a meeting or series of meetings at which no pari-mutuel wagering is in progress, with an annual total of more than six (6) days duration and in which pari-mutuel wagering is permitted.

(33) "Field" or "mutual field" means a single betting interest involving more than one (1) horse formed when the number of horses in a race exceeds the number of entries.

(34) "Favoritism" means money due to a licensee because of error, fault, neglect of duty, breach of contract, or a penalty imposed by the judges or the Authority.

(35) "Handicap" means a race in which allowances are made according to a horse's: (a) Age; (b) Sex; (c) Claiming price; and (d) Performance.

(36) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(37) "Horse" means any equine (including and designated as a mare, filly, stallion, colt, gelding or gelding) registered for racing.

(38) "In harness" means that the performance shall be to a sulky.

(39) "Inquiry" means an investigation by the judges of a contest prior to declaring the result of the contest official.

(40) "Late closing race" means a race for a fixed amount of money in which entries close less than six (6) weeks but not more than three (3) days before the race is to be contested.

(41) "License" means an individual, firm, association, partnership, corporation, trustee, or legal representative, licensed to conduct or participate in harness racing under the provisions of the Kentucky Revised Statutes.

(42) "Maiden" means a horse that has never won a heat or race at the age at which it was entered, and for which a purse is offered.

(43) "Maiden race" means a race restricted to maidens.

(44) "Match race" means a race between two (2) or more horses under conditions agreed upon between the contestants.

(45) "Match race" means a race in which no entrance fee is charged and in which the purses, if any, are not money.

(46) "Minute pool" means the amount of money to be distributed on winning wagers exceeds the amount of money comprising the net pool.

(47) "Month" means a calendar month.

(48) "Net pool" means the amount of gross ticket sales less refundable wagers and statutory commissions and taxes.

(49) "Nomination" means the naming of a horse to a certain race or series of races, generally accompanied by payment of a prescribed fee.

(50) "Withdrawal of entry" means a verbal claim of foul in a race lodged by the horses, driver, trainer, or owner before the race is declared official.

(51) "Official order of finish" means the order of finish of the horses in a contest as declared official by the judges.

(52) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(53) "Optional claiming races" means a contest restricted to horses entered to be claimed for a stated claiming price, and to horses which have started previously for that claiming price or less.

(54) "Overnight race" means a contest for which entries close at a time set by the Authority.

(55) "Pari-mutuel wagering" means a system of waging in which those persons who wager on horses that finish in specified positions share the total amount wagered, minus deductions permitted by law.

(56) "Payoff" or "payoff pool" means the amount of money payable to winning wagers.

(57) "Post position" means the preassigned position from which a horse will leave the starting gate.

(58) "Post time" means the scheduled starting time for a race.

(59) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules in which, if true, shall exclude that horse from entry or race.

(60) "Purse" means the total cash awarded as a prize in a race.

(61) "Scratch" means the act of withdrawing an entered horse from a race after the closing of entries.

(62) "Scratch time" means the deadline set for withdrawal of entries from a scheduled race.

(63) "Simulcasting" is defined in KRS 230.210(12).

(64) "Single price pool" means an equal distribution of profit to winning betting interests or winning betting combinations through a single payout tax.

(65) "Stable name" means a name used other than the actual legal name of an owner or lessee and registered with the United States Trotting Association.

(66) "Slate" means a race which will be contested in a year subsequent to its closing in which the money given by the association conducting the race is added to the money contributed by the nominators, all of which except deductions for breeders or nominators' awards remain to the winner or winners, and in which, except as provided in KAR 1-940, Section 6, all of the money contributed by the nominators belongs to the winner or winners.

(67) "Starter" means a horse which becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

(68) "Sulky" means a dual-wheel racing vehicle with dual shafts not exceeding the height of the horse's withers.

(69) "Takeout" means the total amount of money, excluding takeout, withheld from each pari-mutuel pool as authorized by statute or administrative regulation.

(70) "Totalizator" means the system used for recording, calculating, and disseminating information about ticket sales, wagering odds, and payoff prices to patrons at a pari-mutuel wagering facility.

(71) "Trotting" means the act of soliciting anything of value in exchange for information regarding the outcome of a horse race on which wagers are made at a wagering facility under the jurisdiction of the Authority.

(72) "USTA" means the United States Trotting Association.
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(73) "Walkover" means a race in which only one (1) horse starts or in which all the starters are owned by the same interest.
(74) "Add-money early closing event" means an event closing in the same year in which it is to be contested in which all entrance and declaration fees received are added to the purse.
(75) "Appeal" means a request for the commission to investigate, consider, and review any decisions or rulings of judges or officials of a meeting and may deal with placings, penalties, interpretations of the rules, or other questions dealing with the conduct of races.
(76) "Claiming race" means a race in which any horse starting therein may be claimed for a designated amount.
(77) "Classified race" means a race regardless of the eligibility of horses, with entries being selected on the basis of ability or performance.
(78) "Commission" means the Kentucky Horse Racing Commission.
(79) "Conditioned race" means an open race to which eligibility is determined according to specified qualifications excluding the use of records or time bars and including the following:
(a) "Horse" means a gelding, mare, or stallion.
(b) "Money" means a specified number of previous races or during a specified period or time.
(c) "Age" means a horse's age during a specified period of time.
(d) "Qualification" means a qualification that is listed in the rules of racing.
(e) "Rule" means a rule of racing that is listed in the rules of racing.
(f) "Select" means to choose or select something.
(g) "Stakes" means that a horse is ineligible to race, unless the owner, trainer, or official who is responsible for the horse gives written permission to race.
(h) "Win" means to be the first or best in a race.
(i) "Winning" means to be the first or best in a race.
(j) "Winning interest" means a person who is entitled to receive the winnings for a horse in a race.
(k) "Wagering" means bets placed on a race or event.
(l) "Wagering pool" means a pool of money collected from wagers placed on a race or event.
(m) "Wagering system" means a system of wagering that is approved by the commission.

(21) "Late closing-race" means a race for a fixed amount to which entries close less than six (6) weeks and more than three (3) days before the race is to be contested.
(22) "Licensee" means an individual, firm, association, partnership, corporation, trust, or legal representative, licensed to conduct a harness race meeting under the provisions of the Kentucky Revised Statutes.
(23) "Maiden" means a stallion, mare, or gelding that has never won a heat or race at the gate at which it is entered to start and for which a purse is offered, except that races or purses money awarded to a horse after the "official sign" has been posted shall not be considered a winning purse or offer.
(24) "Match" means a race which has been arranged and the conditions thereof agreed upon between the contestants.
(25) "Match race" means a race with no entrance fee and where the purse, if any, are other than money.
(26) "Overnight event" means a race for which entries close not more than three (3) days, excluding Sundays, or less before the race is to be contested and in the absence of conditions or notice to the contrary, all entries close not later than 12 noon the day preceding the race.
(27) "Protest" means an objection, properly sworn to, charging that a horse is ineligible to race, unless the owner, trainer, or official who is responsible for the horse gives written permission to race.
(28) "Record" means the fastest time made by a horse in a race or dash which he won.
(29) "Stakes" means a race which will be contested in a year subsequent to its closing in which the money given by the track conducting the race is added to the money contributed by the nominees, all of which except deductions for the cost of promotion, breeders or nominees' awards belong to the winner or winners and except as provided in 811-KAR 1-040, Section 6, all of the money contributed by the nominees shall be paid to the winner or winners.
(30) "Standard record" means a record of 2:20 or faster for two (2) years-old and 2:16 or faster for all other ages.
(31) "Sulky" means a sulky driving vehicle.
(a) "Bridle" means a headstall that shall be hooked separately on each side and
(b) Not exceeding the horse's withers in height.
(32) "Two (2) in three (3)" means that a horse shall win two (2) heats to be entitled to first money.
(33) "Walkover" means when only horses in the same interest start and go once over the course and in all stake races would then be entitled to all the stake money and forfeits unless otherwise provided in the published conditions.
(34) "Winner" means:
(a) The horse whose nose reaches the wire first;
(b) If there is a dead heat for first, both horses shall be considered winners;
(c) Where two (2) horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy or
(d) Where the dashes or heats are of the same distance and the horses are tied in the summary and the time, both horses shall be considered winners.
(35) "Wire" means a real or imaginary line from the center of the judge's stand to a point immediately across, and at right-angles to the track.

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

-910-
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms that are utilized in the standardbred regulations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to ensure that people reading the standardbred regulations are using the same defined terms.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the Kentucky Horse Racing Authority "control of the conduct of racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horset racing and wagering thereon is conducted." Additionally, KRS 230.260(3) grants the Authority "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meet shall be conducted in this state and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meet." This administrative regulation conforms to that statutory directive.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation defines terms used throughout the standardbred regulations and therefore makes those regulations more understandable and usable.

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

(a) How this amendment will change the existing administrative regulation: This amendment modernizes the standardbred regulations to conform them to current industry standards.

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

This amendment is necessary to make the standardbred regulations consistent with current industry standards and common usage of terms in the industry.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "promulgate necessary and reasonable... regulations... under which horse racing shall be conducted." KRS 230.260(3).

(d) How the amendment will assist in the effective administration of the statute: This amendment will allow the Authority to more effectively control horse racing by allowing it to amend other regulations and utilize terms that meet the industry standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all racing associations, licensees and persons in any way connected to standardbred racing, including the wagering public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

It is not anticipated that the regulated entities identified in question (3) will have to take any specific action to comply with this amendment.

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

It is not anticipated that there will be any cognizable cost to any of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? All of the entities listed will benefit from this amendment to the regulations will result in standardbred racing operating more smoothly, efficiently and in conformity with current standards within the industry.

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

(a) Initially: No increase in cost.

(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: There will be no additional costs incurred in implementing this amendment.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(Amendment)

811 KAR 1:00. Associations [Tracks].

RELATES TO: KRS 230.215, 230.260(1) [230.630(1)–(9); 230.640];

STATUTORY AUTHORITY: KRS 230.215(2), 230.630(3)–(4), (7);

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to regulate horse racing [to regulate conditions under which harness racing shall be conducted] in Kentucky. The function of this administrative regulation is to regulate the operation of harness racing associations [tracks].

Section 1. During the course of its racetrack meetings, a [each] licensed harness racing association shall display in the racing association's office the license issued by the Authority [commission] for the current year.

Section 2. [Hippodromes—Ban. All races shall be bona fide contests with the winner receiving the largest share of the purse and the balance of the purse distribution made according to the finish. No hippodroming or other arrangement for equal distribution of the purses money among the contestants is permitted. Violation of this rule will subject the track officials in charge, and the owners and drivers to fines: suspension or expulsion.

Section 3.] Default in Payment of Purses. An association shall not default [Any track—that defaults] in the payment of a purse [premium] that has been offered in a race [need for; shall, after a hearing before the commission, stand suspended, together with its officials. No deduction, voluntary or involuntary, may be made from any purse or state or state-future except that if the conditions specifically so provide, reasonable deductions may be made for clerical printing, postage and surety bond expenses specifically related to such purse, stake or futurity.

Section 3. [4.] Time to File Claims for Unpaid Purses. Unless a claim [claim] for an unpaid purse is [premium shall be] filed with the Authority [the commission] within twelve [12] months [60 days] after the date the race is contested, the Authority [Kentucky Harness Racing Commission] may release any performance bond it holds related to the purse [may hold].

Section 4. [5.] If at a meeting of a licensed association [track], a race is contested which has been promoted by another party [or parties], and the promoters [themselves] default in the payment of the amount raced for, the same liability shall attach to the licensed association [track] as if the race had been offered by the [such] licensed association [track].

Section 5. [6.] Minimum Advertised Purse or Schedule of Purses. If an association [When any track advertises a minimum purse [purse] and conducts a [any] race for less than the [said] advertised minimum, the association [such track] shall be fined the difference between the advertised minimum and the lesser purse for which such race was conducted unless there is a contract with the Kentucky Harness Horsemen's Association concerning purse distributions [and the proceeds of such fine may be distributed among the money-winning horses in proportion to their respective winnings].

Section 6. [7.] Removal of a Horse [Horses] from the Grounds. A [No] horse shall not be ordered off the grounds unless a minimum of twenty-four [24] (without at least seventy-two [72]-hour notice (excluding Sunday) is provided to the person in charge of the horse. A person shall not fail [Notice of less than seventy-two (72)-hour notice (without a [suspension, revocation of any)] to remove a horse after proper notice [said hose shall subject the owner and/or the trainer to suspension, revocation of any or] a fine.

Section 7. [8.] All conditions contained in [all conditions in the] shall be submitted to the commission for approval prior to issuance or publication.

Section 8. [9.] Driver Awards. An association [Except as herein stated, no track] shall not advertise to pay or pay any award other than to an owner, nominator, or breeder of a money-winning horse. An award [awards in addition to the owners, nominators, or breeders of money-winning horses. Awards may be made to a driver of a horse's [driver of horse]] breaking or equaling an association [track] or world record [records], or to a leading driver at a meeting [at meetings].

Section 8. [10.] Paddock Rules. (1) An [Every] extended parmutual association [track] shall:

(4) Provide a paddock or receiving barn.

(2) The paddock or receiving barn shall [must] be completely enclosed with a man- [tawn] fence and each opening through the [said] fence shall be patrolled by a person [persons] licensed by the Authority [who shall] [the commission to do so] exclude unauthorized personnel [therefore]. A daily record of a person [all persons] entering or leaving the paddock from one (1) hour prior to post time until a race on [all races of] that program has [have] been completed shall be maintained on a form provided by the association [and] [form] approved by the Authority [commission].

(3) A horse [Horses] shall be in the paddock at the time prescribed by the presiding judge, but in any event at least one (1) hour prior to post time of the race in which the horse is to compete. Except for a warm up trip, a horse [trip, no horse] shall not leave the paddock until called to the paddock.

(4) Any person [Persons] entitled to admission to the paddock shall [must] be at least sixteen (16) years old and shall include:

(a) An owner of a horse competing on the date of the race;

(b) A trainer of a horse competing on the date of the race;

(c) A driver of a horse competing on the date of the race;

(d) A groom and caretaker of a horse competing on the date of the race;

(e) An official whose duties require the presence of that person in the paddock or receiving barn:

(i) An official of the Authority [Owners of horse competing on the date of the race];

(ii) Trainers of horses competing on the date of the race;

(iii) Drivers of horses competing on the date of the race;

(iv) Grooms and caretakers of horses competing on the date of the race;

(v) Officials whose duties require their presence in the paddock or receiving barn;

(vi) Officials of the Kentucky Harness Racing Commission;

(vii) The designated representative of the horsemen; and

(viii) A person approved by the presiding judge and the association who is a guest of an owner or a horse competing that day [horsemen].

(5) Unless permission is granted by the judges, a [No] driver, trainer, groom, or caretaker, once admitted to the paddock or receiving barn, shall not leave the paddock or receiving barn [same] other than to warm up a [a] horse until the [such] race, or races, for which he was admitted is contested.

(6) A person, other than a driver shall [No person except an owner, who has another horse racing on a later race, or an official, shall return to the paddock until all races of that program shall have been completed; that is] (2) At races, except drivers in the driver's stand, must] leave the paddock as soon as the person's [thief's] duties are completed for the race or races for which that person was [they were] admitted.

(7) A member [All members] of a registered stable, other than the driver, shall be entitled to admission to the paddock on any one [one (1)] race day a horse owned by that stable is racing.

(8) [9] During racing hours an association [each track] shall provide the services of a farrier within the paddock.

(9) [10] During racing hours an association [each track] shall promptly provide suitable extra equipment as may be necessary, and the services of a farrier within the paddock.

(11) Each track shall provide adequate water fountain, com-
fort stations and wash rooms in the paddock for both men and women.

(14) Each track shall see that the provisions of this rule are rigidly enforced and a fine not to exceed $500 for each violation of this rule may be imposed by the commission after a hearing]

Section 9.14. Photo Finish, Film Patrol, Head Numbers, Starting Gate. (1) At an association [all-track] where pari-mutuel wagering is allowed, a photo finish, film patrol, head numbers, saddle pads, and starting gate shall [must] be used.

(2) At an extended pari-mutuel meeting, the association shall provide for a back-up starting gate.

(3) If [Whenever] the judges use a photo to determine the order of finish, the photo [photo (a)] shall be posted for public inspection.

(4) The photo finish equipment shall include [not be acceptable unless] a stationary camera, mounted above the finish wire and perpendicular to the race track, along with a winner or stationary target [is used therein].

(5) A camera utilizing a shutter between the film and the race track during the actual finish of a race, or which has a field view greater than twelve inches at the finish line, shall not be utilized. The preceding judge shall verify that the photo finish equipment is in working order prior to each racing program.

Section 10. Insurance. An association [Each track] shall prepare and prominently display, in the race secretary's office, a statement containing [giving] the name of the company providing [with which they carry] driver insurance coverage.

Section 11. (11a) An association at an [12. Supervision of Meeting. Although track-licensed persons have the obligation of general supervision of their meeting, interference with the proper performance of duties of any official is hereby prohibited.

Section 14. Even an extended pari-mutuel meeting [track] shall be equipped with a scientifically reliable breath, blood, or urine alcohol testing [analysers] device approved by the Authority and operated by a person certified to use such a device. A licensee may [and all drivers, judges, starters, and marshall shall] be required to submit to a breath analyser test at the discretion of the preceding judge [deputy commissions] or his assistant.

(a) A person shall not be permitted to drive:

(1) If a breath, blood, or urine alcohol testing device reveals that the person's entry into the paddock a reading of 0.05% or more of alcohol or any trace of illegal controlled substance either in the breath, blood, or urine of that individual. or

(2) Whenever, in the opinion of the preceding judge, a person is impaired to the point the person's driving skills or judgement may be affected.

(b) At the time of entry into the paddock: if a breath, blood, or urine alcohol testing device given to a person who is scheduled to drive reveals the presence of 0.05% or more of alcohol or any trace of an illegal controlled substance in the breath, blood, urine, or breath of that individual at any time on a race day during which that person is scheduled to drive, if alcohol or illegal substances are found to be present [in the case of drivers, if the results of such tests show a reading of more than five-tenths (0.50) percent of alcohol in the blood, each driver shall be immediately relieved of his duties for that program and a report shall be made prior to the next race day to the Authority [Kentucky-Hanoveranian Commission] for appropriate action. The individual may be charged with a violation pursuant to Section 15(1) of this administrative regulation.

(c) In any meeting other than an extended pari-mutuel meet- ing, a driver, judge, starter, driver of the starting gate, and marshall shall submit to a breath, blood, or urine alcohol test when requested by the preceding judge. The result of the test shall be governed by subsection (2) of this section, and the individual may be charged with a violation pursuant to Section 15(1) of this administrative regulation.

Section 12. Any saddle paid in use at an association conducting an extended pari-mutuel meeting shall be standardized consistent with a format to be established by the United States Trotting Association.

Section 13. Horse Ambulance. During an extended pari-mutuel race meeting, an association shall provide a properly equipped and properly manned horse ambulance for the removal of injured or dead animals from the track. The horse ambulance shall be present on the ground at any programmed race, time trial, or qualifying race under the jurisdiction of the Authority. A horse ambulance shall be equipped with a screen for use when it is necessary to destroy an animal in view of the general public, and with a which to lift dead or injured animals onto the ambulance. It shall be the responsibility of the Authority to ensure that proper supplies of alcohol, water, euthanasia medication, and horse leg splints are aboard the ambulance.

Section 14. Emergency Medical and Ambulatory Services for Persons. (1) At an association where any programmed race, time trial, or qualifying race under the jurisdiction of the Authority, it shall be the responsibility of the association to:

(a) Provide a licensed paramedic, emergency medical technician, or the equivalent; and

(b) Maintain in good operating order an ambulance or other suitable transportation, capable of transporting injured parties to an appropriate medical facility, available and stationed at an entrance to the racing surface allowing for visual contact with the race in progress.

(2) The medical personnel present shall make a prompt response in the event that one [or more drivers or horses are involved in an accident or] there is a need for emergency transportation.

(3) The ambulance shall be stationed at every programmed race, time trial, and qualifying race under the jurisdiction of the Authority.

(4) The emergency medical personnel and the ambulance shall be on the premises during the period beginning one hour prior to post time for the first race on the program, or first qualifying race, through the conclusion of the racing program. If the ambulance must leave its station for any reason, a replacement ambulance shall be present on the association grounds before the next race is run.

Section 15. Penalties. (1) Any person or association that violates Sections 1 through 13 of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095. Section 4(1).

(2) Any person or association that violates Section 14 of this administrative regulation shall have committed a Category 2 violation and shall be subject to the penalties set forth in 811 KAR 1:095. Section 4(2).

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:

(a) What this administrative regulation does:
This administrative regulation sets out standards and guidelines for the operation of racing associations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the rules and standards that govern harness racing associations.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 230.215(2) vests in the Kentucky Horse Racing Authority by force of law to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted...

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the Authority to better control racing by enabling it to establish necessary rules relating to standardized tracks.

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

(a) How this amendment will change the existing administrative regulation:
This amendment modernizes the standardized regulations and conforms them to current industry standards. This amendment to the existing regulation requires racing associations to properly maintain and equip horse ambulances and emergency medical services for persons injured during harness race meetings. Also, breathalyzer equipment must be maintained.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order that the standardized regulations meet current industry standards.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "proscribe necessary and reasonable...regulations... under which horse racing...shall be conducted." KRS 230.250(3)

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Authority to more effectively control horse racing by establishing guidelines to govern the day to day activities of harness racing associations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all racing associations, licensees and persons in any way connected to standardized racing, including the wagering public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Racing associations have historically to provided a properly equipped and manned horse ambulance and emergency medical and ambulatory services for persons. There will be no additional requirements for associations as a result of making those requirements more explicit.

(b) In complying with this administrative regulation or amendment, how much will it cost to each of the entities identified in question (3)? No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? All of the entities listed will benefit since this amendment to the regulation will result in standardized racing operating more safely, efficiently and in conformity with current standards within the industry.

(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: No additional funding necessary.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: P. J. Cooksey

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

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

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

Revenues (+/-): Expenditures (+/-): Other Explanation:
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Public Protection
Kentucky Horse Racing Authority
(Amendment)

811 KAR 1:015. Race officials.

RELATES TO: KRS 230.240(1), 230.260(1), 230.290, 230.310
STATUTORY AUTHORITY: KRS 230.240(1), 230.260(3), 230.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.240(1) authorizes the Authority [commission] to prescribe by administrative regulation the required officials for horse racing and their official duties [for horse-racing]. This administrative regulation sets forth [establishes] the required officials and describes their functions and duties.

Section 1. (1) Officials at a race meeting include the following:
(a) Presiding judge;
(b) Two (2) associate judges;
(c) Racing secretary;
(d) Paddock judge;
(e) Horse identifier;
(f) Clerk of the course;
(g) Official starter;
(h) Official charmer;
(i) Official timer;
(j) Photo finish technician;
(k) Patrol judge;
(l) Program director;
(m) Official Authority veterinarian;
(n) Any other person designated by the Authority.

(2) At a Establish or county fair, there shall be at least one (1) judge approved by the Authority in the in the judges' stand. In addition, at any meeting at which races are charted, the association shall provide both a licensed starter and a licensed clerk of the course. Officials Required. (1) In every race, there shall be:

- Except as provided in subsection (2) of this section, not less than two (2) patrol judges;
- A racing secretary;
- A starter;
- A clerk of the course; and
- Two (2) timers and an approved electronic timing device.
- If a patrol car is used:
  - One (1) associate judge may ride in the car; and
  - The patrol judges may be eliminated.

Section 2. (1) A Judge [An official] shall be licensed and approved by the Authority [commission].
(2) With the exception of the timer, prior to consideration by the Authority [commission] for appointment as a Judge [race official], a person shall:
(a) Have attended the University of Louisville Judge Accreditation School, the University of Arizona National Stewards Judge Accreditation Program, or any other accreditation school or program approved by the Authority; [A United States Trotting Association Officials School; and
(b) Have satisfactorily passed a written or oral examination given by the school;
(c) Be of good moral character and reputation;
(d) Possess the requisite knowledge of the duties expected of the position as well as the rules of horse racing; and
(e) Not be a director or employee of the United States Trotting Association, Standardbred Canada, or any racing jurisdiction.

Section 3. An association shall submit to the Authority, at least thirty (30) days prior to the opening of a race meeting, a written list of racing officials and applicable employees. (4) If an official is required, a track that permits an unlicensed person to officiate shall be fined an amount not exceeding $250 for each day the unlicensed person officiates.
(2) An unlicensed person who officiates shall be fined an amount not to exceed $250 for each day he officiates.

Section 4. Officials at Extended Meetings. (1) The following officials shall not serve at an extended pari-mutuel meeting without a valid Authority [commission] license:
(a) Presiding judge;
(b) Two (2) associate judges;
(c) Racing secretary;
(d) Paddock judge;
(e) Horse identifier;
(f) Clerk of the course;
(g) Official starter;
(h) Official charmer;
(i) Official timer;
(j) Photo finish technician;
(k) Patrol judge;
(l) Program director;
(m) Official Authority veterinarian; and
(n) Any other person designated by the Authority [Associate judges].

(2) The holder of a pari-mutuel license may officiate at all meetings.

(3) A person shall not be appointed to more than one (1) official position at a meeting unless specifically approved by the Authority. (3) At a pari-mutuel meeting, an official who acts as a judge shall not serve as a racing secretary or clerk of the course.

(3) The Authority shall appoint or approve all officials listed in Section 1 of this administrative regulation prior to each harness racing meeting. (4) A licensed official shall not officiate at a pari-mutuel meeting if he is directly or indirectly the owner, or has a direct or indirect financial interest in a participating horse.

(4) A refusal to grant a license to a person may be reviewed by the Authority [commission].

Section 5. Prohibited Practices. A racing official, his or her assistants, or any other employee in the racing secretary's office shall not engage in the following activities while serving in an official capacity at a race meeting:
(1) Have an ownership interest in any horse that is racing at the meeting;
(2) Participate in the sale or purchase of any horse that is racing at the meeting;
(3) Sell or solicit horse insurance on any horse racing at the meeting;
(4) Be licensed in any other capacity without permission of the Authority;
(5) Directly or indirectly wager on the outcome of any live race in which the person is officiating; or
(6) Refuse to submit to a breath, blood, or urine test when directed to do so by the Authority or its designee. [Disqualification to Act as Official – (1)] A person shall be disqualified from acting in an official capacity in a race if he:
(a) Is under suspension, expulsion, or other disqualification;
(b) Has a bet on the race; or
(c) Has an interest in:
1. A bet on the race; or
2. A horse engaged in the race.
(1) If a person is disqualified, he shall notify the management.
(2) The commission shall appoint a substitute.

Section 6. Suspension or Revocation of Official's License. An official may be fined, suspended or removed for:
(1) Incompetence;
(2) Failure to follow or enforce administrative regulations; or
(3) The consumption of alcohol within four (4) hours prior to the time he starts work on an official.
Section 7. Ban on Owning or Dealing in Horses. (1) An employee of a track whose duties include the classification of horses shall not, directly or indirectly:
(a) Be the owner of a horse racing at a meeting; or
(b) Participate financially in the purchase or sale of a horse racing at a meeting.
(2) A person who violates the provisions of this section shall be suspended.

Section 8. Location of Judge's Stand. (1) The judge's stand shall be located and constructed so as to afford an unobstructed view of the entire track.
(2) Nothing that might obscure or otherwise impede an official's vision of any portion of a track during a race shall be permitted on the track.

Section 7. Judge's Stand Occupants. (1) From fifteen (15) minutes before the first race until ten (10) minutes after the last race, the occupants of the judge's stand shall be limited to the following:
(a) Judges;
(b) Clerk of the course;
(c) Secretary;
(d) Starter;
(e) Timers;
(f) Official announcer;
(g) Runner who posts the photo finish;
(h) Officials of the Authority (commission); and
(i) Other persons specifically authorized by the presiding judge.

Section 8. Appointment of Substitute Officials. Where a vacancy exists among the association racing officials, the association shall fill the vacancy immediately. Such appointment shall be effective until the vacancy is filled in accordance with this administrative regulation. The Executive Director of the Authority or the presiding judge shall have the authority to approve temporary or emergency appointments.

Section 9. Appointment of Substitute Judges. If a judge is absent at race time, the presiding judge shall appoint a substitute. If a substitute is appointed, the Authority shall be notified immediately by the presiding judge. The judge or an official shall be suspended, expelled, or fined an amount not to exceed $500, if he is guilty of:
(1) A violation of:
(a) A statute for which a penalty is not provided by statute; or
(b) An administrative regulation governing horseracing; or
(2) Uses insulting language or engages in other improper conduct.

Section 10. Presiding Judge. (1) The presiding judge shall:
(a) [H] Supervise the following persons [specified in the subsection]:
1. [E] Associate judges;
2. [E] Patrol judges;
3. [E] Starters;
4. [E] Paddock judges;
5. [E] Photo finish (E-Finish-wire) judge;
6. [E] Clerk of the course;
7. [E] Timers;
8. [E] Charters;
9. [E] Racing secretary;
10. [E] Official announcer; and
11. [E] Other licensed personnel directly responsible for conducting the racing program.
(b) Promptly [E] notify owners, trainers, drivers and grooms of penalties imposed.
(c) Promptly [E] submit a detailed written report to the Authority by [commission] of violations of the rules by an association [a track], its officers, or race officials.
(d) [E] Make other reports required by the Authority [commission].
(e) [E] Sign each sheet of the judge's book, verifying the correctness of all information, and forward the sheets to the United States Trotting Association no later than the day following the conclusion of the race [unread].
(f) [E] Be responsible for the maintenance of the records of the meeting and for forwarding them to the Authority [commission].

Section 11. Authority and Procedure of Judges. (1) A presiding judge shall:
(a) [H] Levy fines and penalties, as provided by applicable statute and administrative regulation.
(b) [E] Determine questions of fact relating to the race.
(c) [E] Decide any differences between parties to the race, or any contingent matter which shall arise, that are not otherwise provided for in this administrative regulation.
(d) [E] In case of fraud, Declare pools and bets "off" in cases of fraud.

(e) [E] An appeal from the decision of a presiding judge in case of fraud shall not be permitted.
(f) [E] A hearing regarding with respect to pools and bets shall be held made by the presiding judge at the conclusion of the race, and prior to the result of the race being announced as official.

(e) [E] Control the horses, drivers, and assistants by citing and/or punishing drivers or assistants who fail to obey their orders or the [previously] administrative regulations.
(f) By:
1. A fine not exceeding $100; or
2. Suspension; or
3. Expulsion.
(g) An official shall be strictly-enforce penalties prescribed by administrative regulations.
(h) A track shall not:
1. Post or modify a fine imposed by a presiding judge;
2. Review an order of suspension or expulsion; or
3. Interfere with a presiding judge with the performance of his duties.

(i) [E] Examine under oath any party [all parties] connected with a race regarding a [as to any] wrong or complaint.
(j) The judges may Compel by written notice the appearance of any person whose testimony is necessary to the proper conduct of a hearing.
(k) [E] Failure to attend shall be a violation of this administrative regulation and shall be penalized as provided in subsection (5) of this section.

(2) Consider complaints of foul only from the patrol judges [patrols] owners, trainers, or drivers in the race.

(i) [E] Make decisions in the public interest and in the best interest of racing that are required by extraordinary circumstances not covered by these administrative regulations [of-the-commune].

(j) [E] Declare a dash or heat [of a race] no contest if the track is thrown into darkness during the progress of a race because of a failure of electricity, or any unforeseen incident.

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Section 12. [16.] Judges' Duties. (1) A presiding judge shall exclude from the race a horse that in his opinion is improperly equipped, dangerous, or unfit to race, including sick, weak, and extremely lame horses.

(b) [14](a) A horse shall not race:
1. With a tube in its throat, or with the assistance of any other medical device, unless the approval of the presiding judge and the Authority veterinarian are obtained prior to the race;
2. If it does not have unimpaired vision in at least (1) eye; or
3. If it is infected with Equine Infectious Anemia[.] or is a carrier of that disease [thereof].

(b) A horse that is a blader or may race under recognized modification for the bleeding condition, if the:
1. Condition and modification are certified to the commission by the veterinarian—licensed by the commission prior to the race; and
2. Horse is approved for racing by the presiding judge.

(c) Horses that bleed while on-bledor modification shall be placed on the veterinarian's list and shall remain on the list until removed by the commission's veterinarian after consultation with the practicing veterinarian. If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the judges of the commission or their designee. The opinion of the third veterinarian shall be final decision of the issue.

(2) A presiding judge shall investigate any [an] apparent or possible interference, or other violation of 811 KAR 1.075, Section 1, whether or not a complaint has been made by a driver;

(b) Act of cruelty to a race horse that is seen by, or reported to, him by a member during a meeting at which he officiates or (a) if a judge finds that an act of cruelty has been committed, he shall charge the offender pursuant to Section 28(1) of (a) of this administrative regulation.

1. [1] [5] Suspend or fine the offender in an amount not to exceed $500; and
2. [1] [5] Submit a written report of his findings and actions within ten (10) days to the commission;

(c) (ii) The executive director [chairman] of the Authority [commission], or the designated representative of the Authority [commission];

(a) [1] Shall have the same authority as that conferred upon judges by the provisions of this subsection; and

(b) [2] May impose a penalty for an act of cruelty or neglect of a horse committed by a member, whether the act was performed on or off the premises of a race track; and

(c) [3] Shall report any suspected criminal act to the appropriate law enforcement authority;

(4)(3) A presiding judge shall conduct an investigation of an accident to determine its cause on the day of the race or immediately thereafter;

(b) At the time of an accident:
1. Inquiry signed shall be posted; and
2. The race shall not be declared official until the presiding judge has conferred with the patrol judge, if one (1) is present, and the starter;

(4) A presiding judge shall closely observe the performance of the driver and horses in order to ascertain if violations of 811 KAR 1.075 occur.

(b) [14](a) All three (3) judges shall be present, if possible.

(b) A patrol judge shall be present and at least one (1) associate judge shall be present.

(c) The judges shall inspect the penalties prescribed by the administrative regulations of the commission.

(b) A penalty notice shall state:
1. The exact reason why the penalty is being imposed; and
2. A summary of the statute or administrative regulation that was violated.

(c) A penalty imposed on a driver may be reported on the resume of his driver's license by the presiding judge.

(d) If a judge believes that a person has violated an administrative regulation or statute and has left the ground and cannot be contacted, he shall:
1. Conduct an investigation; and
2. Send a detailed report to the commission.

(e) Based upon the judge's report, the commission may impose a penalty not to exceed ten (10) days without granting a hearing.

(f) A hearing shall be conducted prior to the imposition of a penalty in excess of ten (10) days.

(g) If the judge shall submit, in writing, to the commission, a list of witnesses questioned at a hearing, and their testimony;

(b) Testimony shall be recorded;

(c) Tape recording; or

(d) Court reporter's transcript.

(h) The judges shall not make a decision until all witnesses called by the judge and the person who is the subject of a hearing have testified.

(i) Upon request, a person charged with a violation of a statute or administrative regulation shall be given until 12 p.m. of the following day to prepare his defense.

Section 14. [16.] Judges' Procedure. (1) The judges shall:

(a) (b) Be in the stand;

1. [16] Be fifteen (15) minutes before the first race;

2. [16] For ten (10) minutes after the last [first] race; and

3. [16] Whenever the horses are upon the track.

(b) Observe the preliminary warming up of horses and scoring, noting:

1. [16] Behavior of horses;

2. [16] Lameness;

3. [16] Equipment;

4. [16] Conduct of the drivers;

5. [16] Changes in odds at pari-mutual meetings; and

6. [16] Unusual incidents pertaining to horses or drivers participating in races;

7. Any apparent or possible interference or other violation of 811 KAR 1.075, Section 1;

(c) [16] Have the bell run, or give other notice, at least ten (10) minutes before the race or heat. The judges may punish a driver who fails to obey the summoned by:

1. A fine not to exceed $100; and

2. Having his horses ruled out and considered drawn.

(d) Designate one of the judges [themselves] to lock the pari-mutual machines immediately upon the horse reaching the official starting point.

(2) The presiding judge shall:

(a) Approve [4] designate the post time for each race, and

(b) [2(b)] Call the horses at a time sufficient to preclude excessive delay after the completion of two (2) scores; and

(c) [2(c)] Be in communication with the starter [patrol judge]; by use of police phone, etc.; and

2. Submit a written report on the violation.

(c) At least one (1) judge shall observe the drivers throughout the stretch, and specifically note:

(a) [1] Charging course;

(b) Any driving offenses or instances of interference with a race [2] [2] Interference;

(c) Improper use of whips;

(d) Breaks; and

(e) Failure to contest the race to the finish.

(5) Photo sign.

(a) The photo sign shall be displayed.

(b) Display the photo
Section 17. [H+] Clerk Duties; Clerk of the Course. The clerk of the course shall:
(1) [At request of judges] Assist in drawing positions if requested by the judges.
(2) Keep the judge’s book and record (therein):
(a) All horses entered without electronic eligibility certificates (and their eligibility certificate numbers);
(b) Names of owners, [and] drivers, and [drivers’] license numbers of drivers;
(c) The charter lines at pari-mutual meetings;
(d) [At all-race meetings; the] Money won by a [the] horse at that track during that race meeting;
(e) [Note] Drawn or ruled out horses;
(f) The performance [Records] time of horses in minutes, seconds, and fiftihs of seconds; and
(g) [Check eligibility certificates before the race];
(h) After the race enter all information related to the finish of the race [provided for thereon], including the [horse’s] position of a horse in the race if it was charted;
(i) [Verify the correctness of the judge’s book, including race time, placing and money winnings, and reasons for disqualification, if any.]
(j) [Verify that the book is properly signed; and]
(k) [Forward the book to] the judge’s bookkeeper and marked programs to the commission from all extended pari-mutual meetings the day following each racing day.
(i) Notify owners and drivers of penalties assessed by the officials.
(j) Upon request, assist judges in placing horses.
(k) After the race, return the eligibility certificate to the owner of the horse or his representative when requested.

Section 18. [H+] Timers. (1) If an electronic or electronic timing device is used, it shall be a device approved by the Authority [commission].
(2) [All] Time shall be announced and recorded in fiftihs of seconds.
(3) [If] an electronic or electronic timing device is used, there shall be one [timers] in the judge’s or timer’s stand.
(4) An electronic or electronic timing device is not used, there shall be three [timers] in the judge’s or timer’s stand.
(5) The chief timer shall verify the correctness of the record by signing the judge’s book for each race.
(6) The timers shall be in the stand fifteen (15) minutes before the first heat or dash is to be contested.

Section 19. [H+] Paddock Judge. (1) Under the direction and supervision of the presiding judge, the paddock judge shall be in complete charge of paddock activities as specified in 811 KAR 1:010, Section 9 [H+].
(2) The paddock judge shall be subject to the approval of the Authority [this commission].
(3) The paddock judge shall be responsible for:
(a) Ensure that the fields are on the track for the post parade [parade] in accordance with the schedule provided (given to him) by the presiding judge;
(b) [Inspect] (Assure) that the horses, equipment, and stables are in compliance with the rules and regulations of the Authority [this commission];
(c) Supervise [Supervise] paddock gate personnel [men]; and
(d) [Inspect] check in and check out [of] horses and drivers. Check in and check out shall include the identification of all horses coming into the paddock, including the horse’s name, tag number, or other Authority-approved means of identification.
(4) The paddock judge shall:
(a) [Inspect] (Assure) that the activities of the paddock follow these rules and regulations;
(b) Immediately notify the presiding judge of any circumstances
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[anything] that could [in-any-way] change, delay, or otherwise affect the racing program;
(c) Report to the presiding judge any incident of cruelty to a horse that he or she observes or is aware of [has-observed];
(d) Ensure [ensure] that only properly authorized persons are permitted in the paddock;
(e) Notify the presiding judge of a change of racing equipment or shoes before the race;
(f) Inspect and supervise the maintenance of emergency equipment kept in the paddock; and
(g) Notify judges of any trainers, drivers, and grooms [groundmen] who leave the paddock in an emergency.

Section 20, [20.] Identifier. (1) [At-all—extended—pan-mutuel meetings] An association shall employ an identifier, licensed by the Authority [commission] and the United States Trotting Association, at an extended pan-mutuel meeting.
(2) The identifier shall:
(a) Check the identification of all horses coming into the paddock, including the tattoo number, freeze brand, or other Authority-approved means of identification, color, and [any] markings, and
(b) Be under the immediate supervision of the paddock judge, and the general supervision of the presiding judge.
(3)(a) The identifier shall immediately report to the paddock judge a discrepancy that is detected in the tattoo number or freeze brand, or other Authority-approved means of identification, or the color, or markings of a horse, and
(b) The paddock judge shall immediately notify the presiding judge of the discrepancy.

Section 21, [21.] Program Director. (1) Subject to the approval of the Authority, an [commission, each] extended pan-mutuel track shall designate a program director.
(2) The program director shall be responsible for furnishing the public with complete and accurate past performance information as required by 611 KAR 1:020. Section 24 of a program director shall:
(a) Be permitted to act as a program director if he demonstrates he is capable of furnishing accurate and complete past performance information to the general public.
(b) A person shall not act as a program director at an extended pan-mutuel meeting unless that person has secured a license from the United States Trotting Association [the program director shall furnish accurate and complete past performance information to the general public].

Section 22, [22.] Duties of Patrol Judges. (1) [The] Patrol judges shall observe [all activity on the race track in their area at all times] during the racing program.
(2) [The] Patrol judges [They] shall immediately report to the presiding judge:
(a) [Any] Action on the track which could improperly affect the result of a race;
(b) [Every] violation of the statutes and administrative regulations governing racing;
(c) [Every] violation of the rules of decorum;
(d) The lameness or unfitness of a [any] horse; and
(e) [Any] lack of proper racing equipment.
(3) The patrol judges shall:
(a) Be in constant communication with the judges during the course of a [every] race;
(b) Immediately advise the judges of a [every] violation, improper act, or unusual happening which occurs at their station; and
(c) [Submit] individual daily reports of their observations of the racing to the presiding judge.
(d) When directed by the presiding judge, attend hearings or inquiries on violations, when requested by the presiding judge, and testify under oath.

Section 23, [23.] Licensed Charter. (1) At all [all] extended pan-mutuel meetings [meetings] and a grand circuit meeting, a race meeting, race, shall be charted by a licensed charter hired by the track.
(2) The charter shall be subject to the approval of the Authority [this commission], and shall be licensed by the United States Trotting Association. The charter shall be responsible for providing a complete and accurate chart which shall include the following:
(a) The name of the horse;
(b) The name of the driver;
(c) Date and place of race;
(d) Size of track;
(e) Track condition and temperature;
(f) Type of race (trot or pace);
(g) Classification of race;
(h) Distance;
(i) The fractional times of the leading horse, including the race time;
(j) Post position, position at the quarter (1/4), half (1/2), three quarters (3/4), head of the stretch with lengths behind the leader, and finish with lengths behind the leader;
(k) Official order of finish;
(l) Individual time of each horse;
(m) Closing dollar odds where applicable [with favorite designated by an asterisk];
(n) The standard symbols for breaks, park outs, and free legged racing where applicable;
(o) The price for winning, placing, the horse is entered to be claimed less allowances for age and sex if the race is a claiming race; and
(p) Notations of placings, disqualifications, and claimed horses.
(2) Horses who are more than twenty-five (25) lengths off the leader may be noted in charts as distanced "(C)".

Section 24. Any variance from commonly-accepted equipment shall be approved by the presiding [judge] whenever the race secretary shall:
(1) Ensure that all horses racing during the meet have electronic eligibility certificates [receive and safeguard the eligibility certificates of all horses competing at the race track, or stabled on ground-owned or cared for by an association and to return them to the owner of a horse or his representative upon his departure from the ground];
(2) Be familiar with the age, class, and competitive ability of horses racing at the track.
(3) Classify and reclassify horses in accordance with the provisions of applicable administrative regulations.
(4) List horses in the categories for which they qualify, and ensure [ensure] that the lists are current and properly displayed in the room in which the declaration box is located for examination by horsemen and others.
(5) Provide for the listing of horses in the daily program.
(6) Verify the information contained in entry blanks and declarations.
(7) Select the horses to start and [the] also the eligible horses from the declarations in accordance with the provisions of applicable administrative regulations.
(8) Examine nominations and declarations in early closing events, late closing events, and stake events, to verify the eligibility of all declarations and nominations, and to compile lists [of them] for publication.

Section 26, [26.] Penalties. (1) Any person, including a judge, and any association that violates any provision of this administrative regulation, other than Section 11, shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:055, Section 4(1).
(2) Any person who commits fraud under Section 11 of this administrative regulation shall have been paid from pan-mutuel pools to the betting public, the
association, and the Commonwealth, by checking, auditing and filing with the commission verified reports:

(3) The reports shall account for daily pari-mutuel handle distribution and attendance for each preceding racing day;

(4) A final report shall be filed at the conclusion of each race meeting in the Commonwealth;

(5) The daily report shall show for each race:

(a) Number of horses entered
(b) Number of horses started
(c) Number of betting interests
(d) Total money wagered in each betting pool
(e) Refunds, if any, for each day
(f) The sum of all betting pools and total refunds;

(6) Total pari-mutuel handle for the comparable racing day for the preceding year;

(7) The commission supervisors of pari-mutuel betting or their representative shall have access to all association books, records, and pari-mutuel equipment.

JOHN W. CLAY, Secretary
CHRISTOPHER L LILLY, Commissioner
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 14, 2006
FILED WITH COC: August 15, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Association in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets rules that govern the conduct of racing officials.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order that the Authority effectively control harness racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 205.21(2) vests in the Kentucky Horse Racing Authority thepower to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted..." Additionally, KRS 203.250(3) grants the Authority "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse racing meeting shall be conducted in this state and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse racing meeting." This administrative regulation conforms to that statutory directive.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is vital in order that harness racing in Kentucky be effectively monitored and operate smoothly.

(2) If this is an amendment to an existing regulation, provide a brief summary of:
(a) How this amendment will change the existing administrative regulation: This amendment modernizes the standards for pari-mutuel regulations and conforms them to current industry standards with regard to the duties and responsibilities of racing officials. This amendment reflects personnel changes that have occurred since the last amendment to the regulations. Some personnel and racing officials that formerly existed are no longer in use, and this amendment reflects current industry standards. This amendment also adds an accreditation requirement for harness racing judges.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order that the standard regulations meet current industry standards.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "promulgate necessary and reasonable.. regulations... under which horse racing... shall be conducted." KRS 230.260(3).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Authority to more effectively control horse racing by establishing guidelines to govern the day to day activities of harness racing associations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all racing associations, licensees and persons in any way connected to standardbred racing, including the wagering public.

(4) Provide an analysis of how the entities identified in Question (3) will be impacted by either the implementation or non-implementation of this administrative regulation: If now, or by change, if it is on amendment, including:

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: Persons who seek to be standardbred racing judges will be required to attend the University of Louisville or the Accreditation of American Racing Program or another accreditation school approved by the Authority. No other compliance actions are required.

(b) In complying with this administrative regulation or amendment, how much will it cost to each of the entities identified in Question (3)? The Authority shall bear the cost of sending a preceding judge to the accreditation school. The association shall bear the cost of sending an associate judge. The cost is approximately $250 plus expenses. Since associations have only a few judges, this will not have a major financial impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3)? Having accredited officials is critical for judicial horse racing events involving large amounts of money wagered. Judges' decisions are often closely scrutinized and the judges become as well-trained as possible.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be a slight increase in cost attendant with the amendment to this regulation regarding the requirement that harness racing judges attend the stewards' school. The cost for the stewards attending school should be borne by the stewards' school. The cost for the associate judges to attend school shall be borne by the association.

(b) On a continuing basis: See (a) above.

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation. The Kentucky Horse Racing Authority is funded partially from the General Fund of the state and partially by fees levied on racing associations pursuant to KRS Chapter 230. This regulation should not have funding consequences.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost except minimal cost of sending presiding judge to accreditation training.

(d) How much will it cost to administer this program for subsequent years? As in (c)

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

811 KAR 1:020. Registration and Identification of horses.

RELATED TO: KRS 230.215(2), 230.260(1), (2)(-)(3)
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize [make/issue] the Authority [commission] to promulgate administrative regulations prescribing the requirements concerning [relating to] the registration, ownership, and identification of horses, and the furnishing of information about [concerning] horses.

Section 1. Registration. Any matter [all-matter] relating to registration of Standardbred horses shall be governed by the rules of the United States Trotting Association.

Section 2. Bona Fide Owner or Lessee. A horse [Horse(ies)] not under lease shall race in the name of the bona fide owner. A horse [Horse(ies)] under lease shall race in the name of the lessee and a copy of the lease shall be recorded with the Authority [Kentucky Racing Commission]. Persons violating this rule may be fined, suspended or expelled.

Section 3. Program Information. (1) A printed program shall be available to the public at any meeting in which horses are raced for purse money (all meetings where purses are raced for). A program [All programs] shall furnish:
(a) Horse's name and sex;
(b) Color and age;
(c) Size and dam;
(d) Owner's name and address;
(e) Driver's name and address;
(f) Age and weight.
(2) At extended pari-mutual meetings, the following additional information shall be furnished:
(a) In claiming races, the price for which the horse is entered to be claimed;
(b) A minimum of [At least] the last six (6) performances [performances] and accurate chart lines. A performance and [A] accurate chart line shall include:
1. Date of race;
2. Place of race;
3. Size of track, if other than a half-mile track;
4. Symbol for free-legged pacers;
5. Symbol for hobbled trotters;
6. Track condition;
7. [6] Type of race;
8. [7] Distance;
9. [8] The fractional times of the leading horse including race time;
10. [9] Post position;
11. [10] Position of:
(a) One-quarter (1/4);
(b) One-half (1/2);
(c) Three-quarters (3/4);
d. Stretch with lengths behind leader;
e. Finish with lengths behind leader;
13. [12] Closing dollar odds;
14. [13] Name of the driver; and
15. [14] Names of the horses placed first, second, and third by the judges. The standard symbols for breaks and park-outs shall be used, where applicable;
(c) Information indicating drivers racing with a provisional license;
(d) Information indicating pacers that are racing without hobbles;
(e) Information indicating trotters that are racing with hobbles;
(f) Summary of starts in purse races, earnings, and best win time for current and preceding year. A horse's best win time may be entered in either a purse or nonpurse race;
(g) The name of the trainer and stable, if applicable;
(h) The [consolidated line shall carry] date, time, driver, finish, track condition, and distance on the consolidated line, if the race is not [at] one (1) mile;
(i) [All] All horses drawn into an early closer, a late closer, stake, or futurity shall be listed in [at] the official program.

Section 4. Failure to Furnish Reliable Program Information. Any person, including a program director or association official who knowingly provides inaccurate information regarding a horse's performance or who knowingly attempts to have inaccurate information given on a program, shall be considered to be in violation of this administrative regulation and shall be charged pursuant to Section 6(1) of this administrative regulation. The association [The failure to furnish reliable program information—may—subject the track] or program director to a fine not to exceed $500 and the track or the program director may be suspended until arrangements are made to provide accurate and reliable program information.
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Section 5. Inaccurate Information. Owners, drivers, or others found guilty of providing inaccurate information on a horse’s performance, or of attempting to have misleading information given on a program may be fined, suspended or expelled.

Section 6. [7] Frivolous Demand for Identification. Any person demanding the identification of a horse without cause or merely with the intent to embarrass a race, shall be punished by a fine not exceeding $100 or by suspension or expulsion.

Section 6-1] Tattoo or Freeze Brand Requirements. A horse shall not be permitted to start at an extended pari-mutuel meeting unless the horse has not been tattooed, or freeze branded, or received other Authority-approved means of identification [unless the permission of the preceding judge is obtained and arrangements are made to include tattooed, or freeze branded, horses. Any person refusing to allow a horse to be tattooed or freeze branded may be fined, suspended or expelled.

Section 7. [8] False Chart Lines. An official, clerk, or person who enters a chart line on an electronic display that is not true shall be considered in violation of this administrative regulation [may be fined, suspended or expelled].

Section 8. [10] Withholding Registration or Eligibility Certificate. Any person withholding a registration certificate from the owner or lessee of a horse, after proper demand has been made for the return thereof, may be fined until such time as the certificate is returned.

Section 9. Penalties. (1) Any person or association that violates Section 4 of this administrative regulation shall be subject to the penalties set forth in 811 KAR 1:065; Section 4(3).

(2) Any person or association that violates any provision of this administrative regulation, other than Section 4, shall be subject to the penalties set forth in 811 KAR 1:065; Section 4(1).

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 14, 2006
FILED WITH JRC: August 15, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 am, at the South Park Theatre at the Visitor’s Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentuck 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3959.

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 rules that govern the registration and identification of horses.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order that the Authority effectively control harness racing.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the Kentucky Horse Racing Authority the power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted...

Additionally, KRS 230.260(3) grants the Authority "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 and to fix and regulate the minimum amount of purses, bonuses, or awards to be offered for the conduct of any horse race meeting." This administrative regulation conforms to that statutory directive.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is vital in order that harness racing in Kentucky be effectively monitored and operated smoothly.

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

(a) How this amendment will change the existing administrative regulation: This amendment modernizes the standardbred regulations and conforms them to current industry standards with regard to the identification and registration of horses. It provides for past performance information in the betting program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order that the standardbred regulations meet current industry standards.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "prescribe necessary and reasonable regulations...under which horse racing...shall be conducted..." KRS 230.260(3).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Authority to more effectively control horse racing by establishing guidelines to govern the day to day activities of harness racing associations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all racing associations, licensees and persons in any way connected to standardbred racing, including the wagering public.

(4) Provide an analysis of how the entities Identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by change, if it is an amendment, including:
(a) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: It is not anticipated that compliance with this amendment to the regulation will result in any additional action on the part of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost to each of the entities identified in question (3)? No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? All of the entities listed will benefit, since this amendment to the regulation will result in standard-
bored racing operating more efficiently and in conformity with current standards within the industry.

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

(a) Initially: No increase in cost.
(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? There will be no additional costs incurred in implementing this amendment.

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

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

(9) TIFRIN#: Is timing applied: No, timing does not apply to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

811 KAR 1:025. Farm or stable name.


STATUTORY AUTHORITY: KRS 230.215(2), 230.260(2) [230.690(4)-(7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse [to regulate conditions under which harness racing] shall be conducted in Kentucky. The function of this administrative regulation is to provide for the licensing of racing stables under the stable name and disclosure of ownership.

Section 1. A racing, farm, corporate, or stable name [name] may be used by an owner or lessee [owners or lessees] if registered with the U.S. Trotting Association and the Authority. A person who has an interest in the stable or intends to utilize its name shall provide his or her name to the Authority [Kentucky Harness Racing Commission giving the name of all persons who are interested in the stable or will use the name]. A person [All persons] listed in a registered stable racing a horse shall [must] have a license issued by the Kentucky Horse Racing Authority [belong to a stable]. An owner [All owners] and any person [persons] listed in a registered stable shall be liable for entry fees and penalties imposed upon [against] the registered stable. If [in the event] one (1) of the owners or persons listed in a registered stable is suspended, all of the horses in that stable shall be included in the suspension.

Section 2. Corporate and Limited Partnership Ownership. If a horse is owned by a corporation, the corporation and any officer, director, or stockholder [officers, directors and stockholders] owning five (5) percent or more of the stock shall be licensed by the United States Trotting Association and the Authority [Kentucky Harness Racing Commission]. A stockholder [Those stockholders] owning less than five (5) percent of the stock shall be reported monthly by the corporation [monthly] to the Authority, but shall not be required to be licensed by the Authority [Kentucky Harness Racing Commission]. The [Such] information to be reported shall include names and amount of stock owned, address, social security number, and date of birth. [However, said stockholders shall not be required to be licensed by the Kentucky Harness Racing Commission.] If a horse is owned by a limited partnership, the general partner and all limited partners owning an interest of five (5) percent or more may be licensed by the United States Trotting Association and the Authority. A limited partner [Kentucky Harness Racing Commission—Those limited partners] owning less than five (5) percent interest shall be reported monthly to the Authority and the required [Kentucky Harness Racing Commission—Such] information shall include names and interests [interests] owned, address, social security number, and date of birth. A limited partner [said limited partners] shall not be required to be licensed by the Authority [Kentucky Harness Racing Commission].

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 am, 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7780, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jim Gallagher

(a) Provide a brief summary of:

(1) What this administrative regulation does: This administrative regulation sets out rules the use of a farm or stable name.

(b) The necessity of this administrative regulation: This admin-
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Iatric regulation is necessary in order that the Authority effect-
vively control harness racing.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: KRS 230.215(2) vests in the Kentucky
Horse Racing Authority "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..." Additionally, KRS
230.260(3) grants the Authority "full authority to prescribe neces-
sary and reasonable administrative regulations and conditions
under which horse racing at a horse race meeting shall be con-
ducted in this state and to fix and regulate the minimum amount of
purses, stakes, or awards to be offered for the conduct of any
horse race meeting." This administrative regulation conforms to
that statutory directive.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
trative regulation is vital in order that harness racing in Kentucky be
effectively monitored and operate smoothly.
(2) If this is an amendment to an existing regulation, provide a
brief summary of:
(a) How the amendment will change the existing administrative
regulation: This amendment modernizes the standardbred regula-
tions and conforms them to current industry standards with regard
to the use of a farm or stable name. This amendment refines lan-
guage requiring officers, directors or stockholders owning 5% or
more of stock in a racing stable to be licensed.
(b) The necessity of the amendment to the administrative
regulation: This amendment is necessary in order that the stan-
derbred regulations meet current industry standards.
(c) How this amendment conforms to the content of the
authorizing statutes: This amendment enables the Authority to
carry out its statutory directive to "prescribe necessary and rea-
sone... regulations... under which horse racing... shall be con-
ducted." KRS 230.260(3).
(d) How the amendment will assist in the effective administra-
tion of the statutes: This amendment will allow the Authority to
more effectively control horse racing by establishing guidelines to
govern the use of a farm or stable name.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: This regulation affects all racing associations,
licensees, farms, stables, and persons in any way connected to
standardbred racing, including the wagering public.
(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this adminis-
trative regulation, if new, or by change, if it is an amendment, in-
cluding:
(a) List the actions that each of the regulated entities identified
in Question (3) will have to take to comply with this administra-
tive regulation or amendment: It is not anticipated that compliance
with this amendment to the regulation will result in any additional action
on the part of the regulated entities identified in question (3).
(b) In complying with this administrative regulation or amend-
ment, how much will it cost to each of the entities identified in
question (3)? No cost.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3)? All of the entities listed will bene-
fit, since this amendment to the regulation will result in standard-
bred racing operating more efficiently and in conformity with cur-
rent standards within the industry.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: No increase in cost.
(b) On a continuing basis: No increase in cost.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: There
will be no additional costs incurred in implementing this amend-
ment.
(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 change if it is an amendment: No increase in
funding.
(8) State whether or not this administrative regulation estab-
ishes any fees or directly or indirectly increases any fees: This
amendment does not increase any fees.
(9) TIERING: Is tiering applied: No, tiering does not apply to
this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
service, or requirements of a state or local government (including
cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government
(including cities, counties, fire departments, or school districts) will
be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative
regulation.
4. Estimate the effect of this administrative regulation on the
expenditures and revenues of a state or local government agency
(including cities, counties, fire departments, or school districts) for the
first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first
year?
(d) How much will it cost to administer this program for sub-
sequent years?
Note: If specific dollar estimates cannot be determined, provide
a brief narrative to explain the fiscal impact of the administrative
regulation.
Revenues (+/-): 
Expenditures (+/-):

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

611 KAR 1:030. Eligibility and classification.

RELATES TO: KRS 230.215, 230.260 [230.630(1), (3)]
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)
[230.630(3), (4), (7)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS
230.215(2) and 230.260(3) authorize the Authority to promulgate
administrative regulations prescribing the conditions under which
horse [to regulate conditions under which harness racing] shall be
conducted in Kentucky. The function of this administrative regula-
tion is to set out the eligibility and classification of horses for races and
medical tests required.

Section 1. Electronic Eligibility Certificate. (1) A horse shall
not be permitted to start in any betting or nonbetting race, qualify-
ing race, time trial, or official workout, without first securing an
electronic eligibility certificate. [There shall be an automatic fine of
$100] dollars on the owner if a horse is declared in without first
possessing a current USA or validated CTA eligibility certificate at
the gate the horse is declared to race. The track shall automatically
be fined $5 for accepting a declaration without an eligibility
certificate for the proper age and sex. The track may refuse to accept
any declaration without the eligibility certificate for the proper age
first being presented. Teleographic or telephone declarations may
be sent and accepted without penalty, provided the declarer fur-
nishes adequate program information, but the eligibility certificate
must be presented when the horse arrives at the track before he
races, or the above fines will be imposed.
(2) The race secretary shall check each electronic eligibility
certificate and certify to the judges as to the eligibility of each horse
entered to race [all the horses].

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Section 2. Racing Season. For purposes of eligibility, a racing season or racing year shall be the calendar year. In recording winnings, gross winnings shall be used and odd cents shall be dropped and disregarded.

Section 3. Sale or Lease during Current Year. If [When] a horse is sold or leased after an electronic eligibility certificate is issued for the current year, the seller or the [III] authorized agent of the seller shall endorse the transfer (eligibility certificate) to the new owner or lessee. The transfer shall be effective upon electronic transfer by the clerk of the course of the electronic registration certificate which may be provided immediately by the registration certificate by the United States Trotting Association for a transfer of the United States Trotting Association a copy of the lease, the eligibility certificate following the horse. If the eligibility certificate is not endorsed to him, the new owner or lessee must apply to the United States Trotting Association for an eligibility certificate.

Section 4. Leased Horses. A horse on lease shall race in the name of the lessee. An electronic eligibility certificate shall not be issued to a horse under lease unless a copy of the lease is filed with the association. For purposes of issuance of electronic eligibility certificates or transfers of ownership, or both, a lease for an indefinite term shall be considered terminable at the will of either party unless extended or reduced to a term certain by written documentation executed by both the lessor and lessee. Information required for the registration certificate of the horse and the lessor shall be provided to the association. The decision, ownership of horses having Canadian eligibility certificates shall be made with the racing secretary with a Canadian eligibility certificate completely filled out for the current year, which has a certificate of validation attached thereto.

Section 5. Correlation of Electronic Eligibility Certificate. A correlation of an electronic eligibility certificate shall be made only by a representative of the United States Trotting Association of a licensed official.

Section 6. Tampering with Electronic Eligibility Certificates. A person who tampers [persons tampering] with an electronic eligibility certificate shall be charged with a violation pursuant to Section 25(2) of the administrative regulations (certificates—may—be fined, suspended or expelled and winnings after such tampering may be ordered forfeited).

Section 7. Denial of Electronic Eligibility Certificate. An eligibility certificate may be denied to any person who fails (refusing) to comply with the administrative regulations set forth in Titled 811 KAR and the requirements of the Authority [permit the horse to be tattooed].

Section 8. An electronic [6. Ne] eligibility certificate shall not [will be issued for an] a horse imported [coming] from a country other than Canada unless the following information, certified by the trotting association or governing body of the [legal] country of origin [from which the horse comes], is furnished.

1. The number of starts during the preceding twelve (12) months [year], together with the number of first, second, and third-place finishes [firsts, seconds, and thirds] for the [each] horse, and the total amount of money won during this period.
2. The number of races in which the horse has started during the current year, together with the number of first, second, and third-place finishes [firsts, seconds, and thirds] for each horse and the total amount of money won during that period.
3. A detailed accounting [list] of the last six (6) starts [starting] [including the date, location [place], track condition, post position or handicap (in the case of a handicap race)], if it was a handicap race, distance of the race, the [last] position of the horse at the finish, the time of the race, the driver's name and the first three [three] horses in the race.

Section 9. Registration of Standard and Nonstandard Bred Horses. [All. Foals [of 1997 and thereafter] shall be registered in current ownership either as standard or nonstandard with the U.S. Trotting Association. If registration is properly applied for and all fees paid, an eligibility certificate for one (1) year may be issued and marked "registration applied for."

Section 10. [9.0] Time Bars. A time record or bar [in time record or bar] shall not be used as an element of eligibility.

Section 11. [10.] Date When Eligibility is Determined. (1) A horse shall not enter a race if the horse is not eligible [horse must be eligible] when entries close. [Last] Winnings on the closing date of eligibility shall not be considered.

(2) In mixed races, trotting and pacing, a horse shall not perform unless it is [must be] eligible to be in the class at the date [at which it is] stated in the entry [the horse will perform].

Section 12. [11.] Conflicting Conditions. If, in the event there are conflicting published conditions and neither is withdrawn by the association [track], the conditions more favorable to the nominator shall govern.

Section 13. [12.] Standards for Overweight Events. The racing [race] secretary shall [should] prescribe standards to determine whether a horse is qualified to race in overweight events. The standards shall be posted where [at a place where] declarations are made and printed on all condition and qualifying sheets.

Section 14. [13.] Posting of Overweight Conditions. (1) At meetings other than extended pari-mutual meetings, conditions for overweight events shall [must] be posted at least sixteen (18) hours before entries close [at meetings other than extended pari-mutual meetings].

(2) At extended pari-mutual meetings where races are held five (5) or more days per week, condition books shall [will be] prepared and races shall not [may] be divided nor shall [as] substituted races [may be used unless [only where] regularly scheduled races fail to fill, except where they race less than five (5) days a week]. A book [such book] containing at least three (3) days racing programs shall [will be] available to horsemen at least twenty-four (24) hours prior to closing declarations on any race program contained in the condition book. When a published condition book is not available, a race secretary shall forward copies of each condition book and overweight sheet to the president of the association (commissioner) as soon as they are available to the horsemen.

Section 15. [14.] Types of Races to be Offered. (1) A racing program shall offer [in the following program of racing], the racing [race] secretary shall use exclusively the following types of races:

(a) Stakes and futurities;
(b) Early closing and late closing events;
(c) Conditioned races;
(d) Claiming races;
(e) Preferred races limited to the fastest horses at the meeting.

Preferred races [These] may be free-for-all races [at any race], or invitational. All races [to be used] in [these] races under this paragraph shall be posted in the race secretary's office and listed with the president and the horse for sale shall not be eligible for conditioned overweight races unless the conditions specifically include horses on the preferred list. A maximum of twelve [12] races may be conducted during a six (6) day period of racing at associations [tracks] distributing more than $100,000 in overnight purses during a six (6) day period of racing [tracks] and not more than ten (10) [track] races shall be conducted at other associations [tracks] during a six (6) day period of racing [provided that] at
least two (2) of the [these] races shall be [are] for three (3) year olds, four (4) year olds, or combined three (3) and four (4) year olds. At any association racing [tracks-which-race] less than five (5) days per week, not more than ten (10) preferred [each] race shall [may] be conducted during a six (6) day period. Any purse [purse] offered for any race under the paragraph [such races] shall be at least fifteen (15) percent higher than the highest purse offered for a conditioned race programmed the same racing week.

(2) A [He] two (2) year old or three (3) year old horse shall not [will] be eligible to be placed on the preferred or invitational list to race against older horses until it has won at least seven (7) races, unless requested by the owner or authorized agent. The owner or authorized agent may withdraw the [such] request at his or her discretion.

(3) [Where] a meeting is in progress in December and continues in January of the subsequent year, races and earnings won at that meeting may be computed in determining whether a horse may be placed on the preferred list.

Section 16. [16] Limitation on Conditions. A condition [Conditions] shall not be written so as to deprive a [in such a way that] an owner of an opportunity to race in normal preference cycles. The word "preferred" is used in a condition it shall not supersede date preference. Not More than two (2) also eligible conditions shall not be used in writing the conditions for any [any] overnight event, and [nor]—may—any multiple conditions shall be prohibited [be used].

Section 17. [16] Dashes and Heats. A [Any] dash or heat shall be considered [as] a separate race for the purposes of conditioned racing.

Section 18. Selection or Drawing of Horses. For any [all] overnight event [events], each starter and also eligible [stateries—and also-eligible] shall be drawn by lot from those properly declared in, except that a race secretary shall [must] establish a preference system for races as provided for in 811 KAR 1 055, Section 5. However, where necessary to fill a card, not more than one (1) race per day [shall] may be divided into not more than two (2) divisions after preference has been applied, [and] The divisions may be selected by the race secretary. For all-otherwise overnight races that are divided, the division shall [must] be by lot unless the conditions provide for a division based on performance, earnings, [at] sex, or claiming price.

Section 19. Posting Requirements. (1) The name of every horse [Names-of-all-horses] at the association [track] ready to race shall be posted by gal in the declaration room, together with all [the] pertinent information concerning the [such] horse which may be required to determine its eligibility the [of-such-horse-to] conditioned races [offered at the track]. There shall be a separate posting of two (2), three (3) and four (4) year olds.

(2) A supplemental purse payment [payments] made by an association [a-track] after the termination of a meeting shall [will] be charged and credited to the winnings of a [any] horse at the end of the racing year in which the purse is [they are] distributed, [and] will appear on the eligibility certificate issued for the subsequent year. [Such] Distribution shall not affect the current eligibility until officially credited to the horse [placed on the next eligibility certificate].

Section 20. Rejection of Declaration. (1) The race secretary [may] reject the declaration on any horse whose electronic eligibility certificate has [was] not been applied for [in-his-possession on the date the condition-book is published].

(2) The race secretary may reject the declaration on any horse whose past performance indicates that the performance of the horse [he] would fall [be] below the competitive level of other horses declared [provided the rejection does not result in a race being cancelled].

Section 21. Substitute and Divided Races. (1) Substitute races may be provided for each day's program and shall be so designated. Entries in races not filling shall be posted. A substitute race or a race divided into two (2) divisions shall be used only if regularly scheduled races fail to fill.

(2) If a regular race fills, it shall not be carried over more than one (1) racing day unless permission from the presiding judge is obtained [be raced on the day it was offered].

(3) Overnight events and substitutions shall not be carried to the next racing day unless permission from the presiding judge is obtained.

Section 22. Opportunities to Race. A fair and reasonable racing opportunity shall be afforded to both trotters and pacers based upon availability and qualifications. The number of [reasonable proportion from these available and qualified to race] claiming races [may be] carded to [the proportion of] each week's racing program shall be as proportionate as possible to [as] the number of [number of claiming authorizations on file with the racing secretary] bears to the total number of horses on the grounds which are qualified and available for racing.

Section 23. Qualifying Races. A horse who qualifies [qualifying] in a qualifying race for which no purse is offered shall not be deprived by reason of such performance of his right to start in any conditioned race.

Section 24. [Definition of Start—The definition of the word "start" in any type of condition unless specifically stated—will include only those performances in a purse race. Qualifying and matinee races are excluded.

Section 25. Sandwiching Races. Not more than five (5) races may be sandwiched.

Section 26. Equine Infectious Anemia. (1) [When it is determined—A horse that has been determined, by means of a "Coggins test" administered by an approved laboratory, to be [is] infected with or [and/or—is] a carrier of equine infectious anemia shall not be permitted to race or be [by means of the "Col—Immuno-diffusion"—method developed by Dr. Leroy Coggins, hereinafter known as the "Coggins Test" and conducted by an approved laboratory, such horse shall, thereafter, be prohibited from racing and/or being] stabilized at a licensed track.

(2) A horse shall not be permitted to enter or remain upon the grounds of any association where race meetings are conducted at any time unless a certificate [negative "Coggins Test Certificate"] properly identifying the horse by tattoo number issued by an approved laboratory, certifying that within the prior twelve (12) months the horse has been tested negative shall be presented to an association [a-track] representative certifying that the horse has been given a "Coggins test" during the past twelve (12) months, and that the result of the test was negative. The certificate shall properly identify the horse by tattoo number, freeze brand, or other Authority-approved means of identification [before any horse will be allowed entrance to, or allowed to remain upon, the grounds of a track conducting meetings].

(3) A horse shall not start in a race unless a negative "Coggins test" written certificate for that horse is [declarations shall not be accepted for any horse to any race unless the declarant-hase] furnished to the race secretary [with a negative "Coggins Test" written certificate for that horse], as required by subsection (2) of this section.

(4) An electronic [He] eligibility [validated] certificate shall not be issued for a horse [for [from]] which a positive "Coggins Test" has been reported. If an electronic eligibility [validated] certificate is issued for a horse that is later [and-are] determined to be infected with, or to be a carrier of, [thereafter that the horse for which the certificate has been issued has] equine infectious anemia, the presiding judge shall [and/or a carrier thereof, the certificate must be returned] immediately notify [by the [holder to the]
U.S. Trotting Association.

Section 25, Penalties. (1) Any person or association which violates any of the provisions of this administrative regulation other than Section 6 of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in KRS 230.200(3), Section 4(1).

(2) A person or association who tampers with electronic eligibility under Section 6 of this administrative regulation shall have committed a Category 2 violation and shall be subject to the penalties set forth in KRS 230.200(3), Section 4(2).

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LUCY, Commissioner
WILLIAM STREET, Chairman

APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 a.m. at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4003 W. Pimlico Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lesa Underwood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out rules regarding the eligibility and classification of harness racing horses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order that the Authority effectively control harness racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the Kentucky Horse Racing Authority "controlful power of control racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted..." Additionally, KRS 230.260(3) grants the Authority "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 and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting." This administrative regulation conforms to that statutory directive.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is vital in order that harness racing in Kentucky be effectively monitored and operate smoothly.

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

(a) How this amendment will change the existing administrative regulation: This amendment modernizes the standardbred regulations and conforms them to current industry standards with regard to classification and eligibility. This amendment reflects the changes within the standardbred industry from the old method of hand-written paper eligibility to electronic eligibility, which is now the norm in the industry. This amendment also establishes that no horse shall be permitted to enter harness racing grounds until the owners can produce a certificate stating that the horse has received a Coggins test for the detection of equine infectious anemia and that the results were negative.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order that the standardbred regulations meet current industry standards.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "prescribe necessary and reasonable regulations... under which horse racing... shall be conducted." KRS 230.260(3).

(d) How the amendment will assist in the effective administration of the regulations: This amendment will allow the Authority to more effectively control horse racing by establishing guidelines to govern the use of a farm or stable name.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all racing associations, licensees, farms, stables, and persons in any way connected to standardbred racing, including the wagering public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: It is not anticipated that compliance with this amendment to the regulation will result in any substantial change in duties on the part of the entities identified in question (3). Some additional responsibilities, such as ensuring that no horses are allowed on the grounds who have not had a negative Coggins test, will result from this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost to each of the entities identified in question (3)? No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? All of the entities listed will benefit, since this amendment to the regulation will result in standardbred racing operating more efficiently and in conformity with current standards within the industry.

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

(a) Initially: No increase in cost.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the
expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

811 KAR 1:35. Claiming races.

RELATES TO: KRS 230.215(1)-(2), 230.260(1)-(3)
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize [authorized by] the Authority [commission] to regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate claiming races.

Section 1. (1) A horse entered in a claiming race may be claimed for its entered price by:

(a) A licensed horse owner who has a horse programmed to start in a pari-mutual race at that meeting;

(b) A licensed horse owner who has received a claim certificate from the Authority [commission]; or

(c) a [Any] person who has qualified as a license as a horse owner and who has received a claim certificate from the Authority [commission].

(2) An authorized agent may claim for a qualified owner in his own right, but only for the account of the person for whom he is agent.

(3) To qualify for a license as an owner, the applicant shall have a current United States Trotting Association or Standardbred Canada membership as an owner or membership as an associate-member.

(4) a [Any] person seeking to knowingly effect a false claim by inducing another to claim a horse for his or her shall be charged with a violation pursuant to Section 10(1) [subject to the penalties provided by Section 9] of this administrative regulation.

Section 2. Prohibitions. (1) A person shall not claim his own horse nor shall he claim a horse trained or driven by him.

(2) A person shall not claim more than one (1) horse in a race.

(3) A qualified owner or his agent shall not claim a horse for another person.

(4) a [Any] owner shall not cause his or her horse to be claimed directly or indirectly for his or her own account.

(5) A person shall not offer, or enter into an agreement, to claim or not to claim or attempt to prevent another person from claiming any horse in a claiming race.

(6) A person shall not enter a horse which has a mortgage, bill of sale, or lien of any kind pending, unless the written consent of the holder is filed with the clerk of the course of the association [track] conducting that claiming race.

Section 3. Claiming Procedure (1) Owner's credit.

(a) A person submitting a claim shall provide to the association [The owner shall have credit with the track giving the race] an amount equivalent to the specified claiming price plus the existing Kentucky sales tax and requisite fees for transfer of registration.

(b) By accepting the claim, the association [racetrack] assumes responsibility for and shall make payment to the owner of the horse claimed.

(c) The money due for a claimed horse shall be paid to the owner of the claimed [horse] within forty-eight (48) hours (Sundays excepted) by the association. If [track], provided that the horse has a current test complying with subsection (14) of this section and if a signed claiming authorization and proper registration papers are provided to the clerk of the course.

(2) A declaration shall not be accepted unless written permission of the owner is filed with the racing [race] secretary at the time of declaration.

(3) The claiming price shall be printed on the program and all claims shall be for the amount so designated and any horse entered in a claiming race may be claimed for the designated amount.

(4) All claims shall be in writing, sealed and deposited at least fifteen (15) minutes before the time originally scheduled for the race to begin in a locked box or designated location provided for this purpose by the Authority [Racing Association].

(a) An official shall not open the claim box or give any information on claims filed until after the horses leave the paddock for the post parade. (immediately after the race, the claim box shall be opened and the claim, if any, examined by the judge.)

(b) If more than one (1) claim is filed for the same horse, the owner shall be determined by lot by the judges.

(5) A horse claimed shall be delivered immediately by the original owner or his or her trainer to the successful claimant upon authorization of the presiding judge; and [

(a) The horse's halter shall accompany the horse; []

(b) The horse's shoes shall not be altered or removed; and []

(c) The saddles, blankets, and other equipment shall be made available to the successful claimant by the paddock judge.

(6) An [Any] owner who refuses to deliver a horse legally claimed out of a claiming race shall be charged with a violation pursuant to Section 10(1) (subject to the penalties provided by Section 9) of this administrative regulation.

(b) A horse claimed shall race in all heats or dashes of the event in the interest and for the account of the owner who declared it in the event.[]

(d) Title to the claimed horse shall be vested in the successful claimant from the time the word "go" is given in the first heat or dash[] and

(e) The successful claimant shall become the owner of the horse regardless of whether the horse is [it-be] 1. Alive;

2. Dead;

3. Sound;

4. Unsound, or

5. Injured during the race or after it.

(d) The final vesting of title to a claimed horse shall be subject to the conditions and provisions set forth in this administrative regulation.

Section 4. Penalties. (1) The judge may require any person making a claim for a horse to affirm [make a statement] by affidavit that the claim [is] is claiming [the] horse for his or her own account or as authorized agent and not for any other person.

(b) a [Any] person knowingly [willfully] making a false statement regarding the claiming process shall have committed a Category 2 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(2) [subject to punishment as hereinafter provided].

(11) A claimed horse may start in a race in which the claiming price is less than the price at which it was claimed.

(a) The horse claimed shall not count, but the following calendar day, which shall not be the first day of the week, may be entered whenever necessary so that the horse may start on the first calendar day following the claim for any claiming price.

(b) If a horse is claimed, a [The] right, title, or interest in that horse [herein] shall not be sold or transferred except in a claiming
race for a period of thirty (30) days following the date of claiming. The presiding judge may, however, waive the thirty (30) day prohibition against sale or transfer.

(b) A [ie] The claimed horse shall be required to [continue to] race at the association [track] where claimed for a period of thirty (30) days or the balance of the current racing meeting, whichever continues.

(12) A horse that has been claimed [out of a claiming race] shall not be eligible to start in a [any] race in the name or interest of the previous owner for thirty (30) days, nor shall that horse remain in the same stable, or under the care or management of the first owner or trainer, or anyone connected with the previous owner [thereof][i] unless reclaimed out of another claiming race.

(13) A horse scratched from a claiming race shall [ie] not be eligible to be claimed:

(a) If [the owner or trainer] of a horse drawn to start in a [entered in a subsequent] claiming race has been declared to start in a subsequent race, the successful claimant of the horse in the first race shall have the option of scratching [may request the judge to scratch] the horse from the subsequent [that] race.

(b) For a period of thirty (30) days, [a] a horse [ie entered in a claiming race] shall not be entered in a subsequent claiming race because of being scratched from a claiming race and then entered in a subsequent race (regardless of classification) shall be eligible to be claimed for an amount equal to the [that] horse shall make the next-start-in-a claiming race for which the horse was carrying in the race from which it was scratched [not higher than the previous claiming price].

(14) Blood sample where horse is claimed.

(a) If the TCO2 level in a prerace test exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles in a horse to which furosemide has been administered, the horse shall be scratched and the claim voided.

2. A postrace drug test may be taken from a horse claimed out of a claiming race at the option of the person claiming the horse. The time of the test shall be the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the postrace sample is collected. The person claiming the horse shall be responsible for all reasonable and actual costs associated with the testing process, except as provided below in subparagraph 3 of this paragraph.

3. Any person who claims a horse may void the claim if the postrace test indicates the horse has:

(a) A blood sample shall not be taken [from] a horse [that] horse has not been administered, or 39.0 millimoles in a horse to which furosemide has been administered. The person claiming the horse shall then be entitled to reimbursement from the previous owner for all reasonable costs associated with the claiming process and the postrace test, including the costs of transportation, board, and the testing process.

(b) An equine infectious anemia (Coggins) test shall not be required if a blood sample has not been taken. If that horse has a valid [veterinary] certificate stating that within twelve (12) months of the day of the [track] claim, the horse has received a Coggins test and is negative for equine infectious anemia. The certificate shall contain [which certificate includes]:

- the horse's lip tattoo number or other Authority-approved means of identification.

(c) If a claimed [and]

- the horse is negative for equine infectious anemia.

(b) In the event that the horse does not have the [ready] certificate described in paragraph (b) of this subsection, then a blood sample shall be taken immediately after the race in the paddock by a licensed veterinarian, and the sample identified as being from a claimed horse. The sample shall be forwarded within twenty-four (24) hours to an approved laboratory to be tested for equine infectious anemia.

(c) Monies paid for a claimed horse shall be held by the association pending the [pending the] receipt of the results of the [a negative] test for equine infectious anemia [the monies paid for the claimed horse shall be held by the track].

(d) If the results of a test on a claimed horse for equine infectious anemia are positive, [ie in the event of a positive test for equine infectious anemia the] ownership of the claimed horse shall, at the option of the claimant, revert to the previous owner [from whom the horse was claimed] and the claiming monies shall be returned to the person [or person's] who claimed the horse.

(i) [ie] The cost of the test shall [ie] be borne by the original owner and the test may not be waived at the claimant's discretion [by the claimant at his discretion by or indicating on the claiming slip].

(15)(a) [ie] Any filly or mare that has been bred shall not be declared into a claiming race for at least forty-five (45) days following the last breeding of the mare. Following that period, a filly or mare that has been bred shall [and thereafter] may be claimed into a claiming race after a veterinarian has pronounced the mare not to be in foal.

(b) [ie] Any mare pronounced in foal shall not be declared into a claiming race.

(c) A [ie] foal may be declared into a claiming race.

2. A [ie] if a horse is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the claimant. The mare is subject to a pregnancy examination no later than twenty-one (21) days after [between the 21st and 24th days after] the date of the claim, and is found to be pregnant as a result of that pregnancy examination.

3. A claimant seeking to void the claim shall file a petition to void that claim with the judges within ten (10) days after the results of the [the] pregnancy examination are received. Following the filing of the petition, [and shall thereafter be heard by] the judges shall conduct a hearing after due notice to all [of the hearing to the] parties [concerned].

4. If the judges determine that the claim is void, the claimant shall receive a reasonable cost (fifteen [15]-[50]-) dollars from the previous owner to cover the cost of the pregnancy examination.

Section 4. Subject to the conditions of Section 3(11)(b) of this administrative regulation, the association [track] shall pay the claiming price to the owner at the time the registration certificate and a signed claiming authorization are [the] delivered for presentation to the successful claimant and shall withhold and pay the Kentucky sales tax to the Commonwealth as required by law.

Section 5. Claiming Conditions. (1) Unless prior approval is given by the presiding judge, [wherever possible] claiming races shall be written to separate horses five (5) years and older [male and female] from young horses and to separate males from females.

2. If sexes are mixed, mares shall be given a twenty (20) percent minimum price allowance.

(a) [ie] There shall be no price allowance given to a spayed mare racing in a claiming race.

(b) An allowance for aga shall be given.

1. Two (2) year olds shall be given a 100 percent allowance;

2. Three (3) year olds shall be given a fifty (50) percent allowance;

3. Four (4) year olds shall be given a twenty-five (25) percent allowance.

(c) Claiming races for two (2) year olds may be conditioned.

(d) Claiming races for three (3) year olds may be conditioned.

(e) [The] The lowest claiming class written at a specific meeting may be conditioned.

Section 6. [No] Non-claiming race shall be offered permitting claiming races for less-than-the-minimum-purse-offered-at that time-during the same racing week.

Section 7. Except as provided in Section 3(11) of this administrative regulation, and except as provided in 811 KAR 1:030, Section 21, a [ie] horse owner shall not be prohibited from determining the price for which his horse shall be entered.

Section 7. [The] The current registration certificate of all horses entered in claiming races shall be on file with the racing secretary together with a separate claiming authorization form signed by the registered owner or owners and indicating the minimum amount for
which the horse may be entered to be claimed.) To facilitate trans-
fer of claimed horses, the presiding judge or racing secretary may
sign the transfer provided that he or she then sends the registration
certificate and claiming authorization to the registrar for transfer.

Section 8. [Any person violating any of the provisions of this
administrative regulation may be fined, suspended or expelled.

Section 10. Fraudulent Claim. (1) If the judges determine that the
declaration of a [any] horse to a claiming race is fraudulent on
the part of the declarer, they may void the claim and, at the option
of the claimant, order the horse returned to the person declaring it
in. The declarer shall be charged with a violation pursuant to Sec-
tion 10(1) of this administrative regulation.

(2) If the judges determine that a [any] claim of a horse is
fraudulent on the part of the person making the claim, they may
void the claim and, at the option of the person declaring it in,
return the horse to the person declaring it in. The person making
the claim shall be charged with a violation pursuant to Section
10(1) of this administrative regulation.

Section 9. [141. (1) If a [any] stable is eliminated by sale or
removal from the grounds, the right to claim is void.

(a) If a stable has been eliminated by claiming, the [affected]
owner [or affected] shall have the right to claim a horse during the
next thirty (30) racing days at any recognized meeting in this
state even though all or a portion of the next thirty (30) racing days take
place in the following calendar year.

(b) The owner or trainer of a stable eliminated by claiming shall
obtain [get] a written statement from the [director of the administrat-
ive regulations]-the presiding judge stating the date and place that the
stable was eliminated by claiming.

(c) If a [that] stable that has been eliminated by claiming ac-
quires a horse before obtaining the statement described in the
paragraph (b) of this subparagraph, [waiving itself of the privilege,
then] the privilege shall be void.

(2) If a [any] stable is eliminated by fire or other hazards, the
presiding judge shall have the discretion to extend [that stable shall
have] claiming privileges [waive the conditions indicated for
the stable eliminated by claiming]-[at the discretion of the dep-
uty commissioner or his assistant].

Section 10. Penalties. (1) Any person or association that viol-
ates Section 3(1) of this administrative regulation by inducing an-
other to claim a horse for him to effect a false claim, or that violates
Section 3(10)(b) of this administrative regulation by knowingly
making a false statement regarding the claiming process, or that viola-
tes Section 8 of this administrative regulation by making a
fraudulent claim, shall have committed a Class 2 violation and shall
be subject to the penalties set forth in 811 KAR 1-025, Section 4(1).

(2) Any person or association that violates any of the provi-
sions of this administrative regulation other than Section 3(1) of
this administrative regulation, Section 3(10)(b) of this administra-
tive regulation, or Section 8 of this administrative regulation, shall
have committed a Category 1 violation and shall be subject to the
penalties set forth in 811 KAR 1-025, Section 4(1).

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 16, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
Wednesday, September 27, 2006, at 11 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 the Kentucky
Horse Racing Authority in writing by Wednesday, September 20,
2006, five working days prior to the hearing of their intent to at-
tend. 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 pro-
posed administrative regulation. Written comments shall be ac-
cepted until Monday, October 2, 2006. Please send written notifi-
cation of intent to be heard at the public hearing or written com-
ments on the proposed administrative regulation to the contact
person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing
Authority, Environmental and Public Protection Cabinet, 100 Air-
port Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-
7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation sets out rules governing claiming races.
(b) The necessity of this administrative regulation: This admin-
istrative regulation is necessary in order that the Authority effec-
tively control harness racing.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: KRS 230.215(2) vests in the Kentucky
Horse Racing Authority "control of horse racing in the Com-
monwealth with plenary power to promulgate administrative
regulations prescribing conditions under which all legitimate horse
racing and wagering thereon is conducted..." Additionally, KRS
230.260(3) grants the Authority "full authority to prescribe neces-
sary and reasonable administrative regulations and conditions
under which horse racing at a horse race meeting shall be con-
ducted in this state and to fix and regulate the minimum amount of
purses, stakes, or awards to be offered for the conduct of any
horse race meeting." This administrative regulation conforms to
the statutory directive.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This admin-
istrative regulation is assists in the effective administration of the
statutes by ensuring that claiming races in Kentucky are effectively
monitored and operate smoothly.

(2) If this is an amendment to an existing regulation, provide a
brief summary of
(a) How this amendment will change the existing administrative
regulation: This amendment modernizes the standardbred regula-
tions and conforms them to current industry standards with regard
to claiming race procedures. This amendment changes the existing
procedure regarding the sale of a horse after it has been claimed.
This amendment permits a sale within 30 days of claiming with
permission of the judge. Prior to this amendment, no sale was
permitted. Also, this amendment allows the voiding of the claim if
the horse tests positive for excessive levels of TCO2 (carbon diox-
ide concentrations) in its system.

(b) The necessity of the amendment to this administrative
regulation: This amendment is necessary in order that the stan-
ardbred regulations meet current industry standards.

(c) How this amendment conforms to the content of the
authorizing statutes: This amendment enables the Authority to
carry out its statutory directive to "prescribe necessary and rea-
sable... regulations... under which horse racing... shall be con-
ducted." KRS 230.260(3).

(d) How the amendment will assist in the effective administra-
tion of the statutes: This amendment will allow the Authority to
more effectively control horse racing by establishing guidelines to
govern the use of a farm or stable name.

(3) List the type and number of individuals, businesses, organi-
izations, or state and local governments affected by this administra-
tive regulation: This regulation affects all racing associations, licen-
ssees, farms, stables and persons in any way connected to stan-
ardbred racing, including the wagering public.

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

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VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

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

811 KAR 1:040. Stakes and futurities.

RELATES TO: KRS 230.215, 230.260(1), 230.630(4), (8), 230.640

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), 230.630(4), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse [Fe] regulate-conditions-under-which-horse[races] racing shall be con-
ducted in Kentucky. The function of this administrative regulation is to regulate stakes and futurities.

Section 1. (1) A stake [At-stake] and futurity [spon-
sorees] or sponsor [presenters] shall submit a list of eligible horses.

Section 2. The application shall contain (1) the following:
(a) Satisfactory evidence of financial responsibility;
(b) An agreement to file with the Authority [commission] a surety bond in the amount of the fund, conditioned on faithful perfor-
mance of the conditions of the agreement. The bond shall include a guarantee that the [said] stake or futurity will be entered as advertised and paid, unless unanimous consent is obtained from the owners of eligible horses to transfer or change the date of the race.

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

Section 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. The estimate shall include a description of the revenues and expenditures that are directly attributable to the administrative regulation.

Section 5. Stakes and futurities conditions which conflict with the statutes and administrative regulations of the Authority [commission] may be refused.

Section 6. A sponsor or presenter (The sponsor) shall:
(a) Provide a list of nominations, not less than 40, to the Authority [commission] by the date of closing.
(b) Furnish to the Authority [commission] a list of nominations, not less than 40, to the Authority [commission] by the date of closing.

Section 7. A sponsor or presenter (The presenter) shall:
(a) Provide a list of nominations, not less than 40, to the Authority [commission] by the date of closing.
(b) Furnish to the Authority [commission] a list of nominations, not less than 40, to the Authority [commission] by the date of closing.
(c) Notify [Failure-to-fail—Notify] all nominators and the Authority [commission] within twenty (20) days of closing if the stake or futurity does not fill.

(d) Provide or make available to the Authority, [List of eligible-She-], mail within twenty (20) days of closing. If the Authority, [List of eligible-She-] does not fill within twenty (20) days following the last payment before the starting fee, a complete list of all horses remaining eligible, segregated by age, sex, and gait. The sponsor or present shall further provide on- or off-the-commission, and shall include a penalty, (mail) within twenty (20) days following the last payment before the starting fee, a complete list of all horses remaining eligible, segregated by sex, age, and gait, to the owners or agents of all eligibles and to the Authority [commission], together with a list of any nominations transferred or substituted if [such-as] permitted by the conditions. The list of eligibles shall also include a resume indicating the current financial status of the stake and futurity, or of each individual division [thereof]. If there is more than one (1) division, by listing the number of horses remaining eligible, the amount of money that has been paid in, and the amount to be added. The purse shall constitute this amount plus starting fees, if any.

(e) [Nominating-and-sustaining-payment-date-She-] shall set the nomination date and the date for [ail] sustaining payments (except the starting fee), for [ail] the 15th day of the month, [and] shall be no payments on yearlings except a nomination payment which [and each nomination payment] shall be due not later than August 15. Before receiving [taking] any sustaining payments during the year the race is to be contested, the date and place of the race shall be stated. No stake or futurity sustaining fee shall be [become] due prior to February 15 of any year. There shall be no conditions that restrict [pay] payment in sustaining stakes or futurities or the [fall] due after August 15 and before February 15 of the following year. [Beginning with stakes and futurities closing in 1976 and thereafter.] The date for closing of the nominations of yearlings to stakes shall be May 15 and the date for closing of the nominations to futurities shall be July 15. There shall be a maximum of [No more than] one (1) sustaining payment on two (2) year olds in stakes or futurities that do not finish first or second in [will-be-permitted]. [No more than two (2)] sustaining payments on any horse of any age in any calendar year with the exception of the starting fee will be approved.

(f) [Advertise—Notice-of-place-and-date-of-race.] Shall, if possible, advertise the week and place, if possible, that the stake or futurity will be raced before taking nominations. If either the week or place, or both, cannot be announced before taking nominations, [that information—Otherwise, announcement of the week and place] shall be furnished [made] as soon as the stake or futurity is sold or awarded.

(g) Forms. Each nomination, entry form, list of nominations, and list of eligibles [All nominations and entry forms, lists of nominations and lists of eligibles] shall be on standard, eight and one-half by eleven (11) paper. Owners [She-] shall be listed [list the owners] alphabetically.

(h) Estimated purse [An] [No] estimated purse shall not be advertised or published in excess of the actual purse paid or distributed during the previous year, unless increased by guaranteed added money. [A] [No] stake or futurity shall not be raced for less than seventy-five (75) percent of the average estimated purse.

Section 2. [Sponsor's Contribution]. (1) If an event is not raced due to circumstances beyond the control of a nonparticipating sponsor, the sponsor shall not be required to contribute a sum as an added money, but instead shall only refund such nominating, sustaining, and starting fees as it has collected toward the canceled event. The sum contributed by a sponsor who is not a track-member shall be considered forfeit and is to be included in the sum distributed in the event that the stake or futurity is not raced.

(2) [Effective, with stakes-and-futurities-opened-in-1975-and thereafter, no] stake or futurity shall not be approved for extended pan-mutual meetings if the added money is not at least thirty (30) percent of the purse, [and] for all other meetings at least ten (10) percent of the purse shall be added. [If on the event a stake or futurity is split into more than two (2) divisions, the conditions of the race shall determine the division of the purse, added money for each division shall be at least twenty-five (25) percent of all nomination, sustaining and starting fees paid into each stake or futurity. In the event a stake or futurity is split into two (2) divisions, each division must race for at least seventy-five (75) percent of the advertised purse, except in the Kentucky Standardbred Development Fund the stallion fee, the nominating fee, the sustaining fee, and the declaration fee shall be added to the advertised purse and each division shall race for an equal part thereof.]

Section 3. Failure to Make Payment. Failure to make any payment required by the conditions shall constitute [constitutes] an automatic withdrawal from the event.

Section 4. Refund of Nomination Fee. If in the event that a mare nominated to a futurity fails to have a foal for the year, the mare shall receive a return of her payment provided [upon] notification is given by December 1 of the year the mare failed to foal. If [not foaling, or if the conditions permit, the] the nomination [pro]vide, he may substitute.

Section 5. [Beginning-with-stakes-and-futurities-closing-in 1976-and thereafter, no] sponsor shall not pay monetary awards to nominators or breeders from [out-of] stake or futurgy funds.

Section 6. Deductions Prohibited. [A] [No] deduction, voluntary or involuntary, shall not [may] be made from any purse, [or] stake, or futurity unless [except that if] the conditions specifically so provide. If deductions are permitted, reasonable deductions may be made for clerical, printing, postage, and such administrative expenses specifically related to the [she-] purse, stake, or futurity.

Section 7. Unless otherwise specified in the conditions of a stake or futurity, the money division shall be:

(1) Five (5) or more starters-[the-following-percentages]: fifty (50) percent to the winning horse, twenty-five (25) percent to the horse that finishes second, twelve (12) percent to the horse that finishes third. Eight (8) percent to the horse that finishes fourth, and five (5) percent to the horse that finishes fifth.

(2) Four (4) starters only-[the-following-percentages]: fifty (50) percent to the winning horse, twenty-five (25) percent to the horse that finishes second, fifteen (15) percent to the horse that finishes third, and ten (10) percent to the horse that finishes fourth.

(3) Three (3) starters only-[the-following-percentages]: fifty-five (55) percent to the winning horse, sixty-five (65) percent to the horse that finishes second, and fifteen (15) percent to the horse that finishes third; and

(4) Two (2) starters only-[the-following-percentages]: sixty-five (65) percent to the winning horse and thirty-five (35) percent to the horse that finishes second.

Section 8. Penalties. [A] [If-the sponsor or any other person who violates any provision [has failed to comply-with-the provisions] of this administrative regulation shall be deemed to have committed a Category 1 violation and shall be subject to the penalties set forth in R11 KAR 105, Section 4(1)]. In addition, the Authority may [the commission shall be authorized to] refuse to renew the future any stakes or futurities submitted by any licensed or unlicensed sponsor or presenter [renoue-i-] stakes-and-futurities and/or impose a fine not to exceed $100.

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send a written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3669

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation governs the conduct of stake races and futurities races.
(b) The necessity of this administrative regulation: The regulation is necessary to regulate stake races and futurities races in a standardized manner.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the Kentucky Horse Racing Authority "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." Additionally, KRS 230.260(3) grants the Authority "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 and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting." This administrative regulation conforms to that statutory directive.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the administration of the statutes by providing clear guidance as to the conduct of stakes and futurities races.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment primarily brings the language of the regulation into conformity with KRS Chapter 13A standards. It slightly alters the conduct of the races by providing that if a stake or futurity is split into 2 divisions, the conditions of the race shall determine the division of the purse.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the regulation conforms to current practices regarding the conduct of stake and futurities races in the Kentucky.
(c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language in the regulation in conformity with the drafting standards in KRS Chapter 13A, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that the broad statutory goals are implemented in a proper manner with regard to stake and futurities races.

* * *

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No steps will have to be taken to comply with the administrative regulation; the regulation simply clarifies the rules pertaining to the races.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation of these races will be conducted according to a clearer body of rules.
(5) Provide an estimate of how much it will cost the administrative body 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: No additional funding required.
(7) 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 increase in funds will be required.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are established.
(9) TIERING: Is tiering applied? Tiering is not applicable here as the regulation applies equally to all stake and futurities races.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Authority.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2) vests in the Kentucky Horse Racing Authority "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." Additionally, KRS 230.260(3) grants the Authority "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 and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting."
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No budget impact.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A
(c) How much will it cost to administer this program for the first year? N/A
(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(Amendment)

811 KAR 1:045. Entries.

RELATES TO: KRS 230 215. 230 260(1) [230 630(1)−(3)], 230 640

STATUTORY AUTHORITY: KRS 230 215(2), 230 260(3) [230 630(3), (4), (7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230 215(2) and 230 260(3) authorize the Authority to promulgate administrative regulations prescribing the [to regulate] conditions under which horse [harness] racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate entries.

Section 1. All entries shall [must]:
(1) Be made in writing or by telephone.
(2) Include all information pertinent to the entry.
(3) Comply [Be] signed by the owner or his authorized agent except as provided in 811 KAR 1:055, Section 1.
(4) Give name and address of both the bona fide owner and agent or registered stable name or lessee.
(5) Give name, color, sex, sire and dam of horse.
(6) Name the event or events in which the horse is to be entered. (Entries in overnight events must also comply with the provisions of 811 KAR 1:055, Section 1 if the entry concerns an overnight event.)

Section 2. Payment of Entry Fee. An entry fee shall be due and payable with declaration to start and shall [will] not be refunded if the horse fails to start unless the horse dies between the time of declaration to start and the start of the race. (For purpose of classification, entry fee shall be deemed as the payment required with declaration to start.)

Section 3. Penalties. The penalty for noncompliance with any of the above requirements is a fine of not less than five ($5) dollars nor more than fifty ($50) dollars for each offense. If the facts are falsely stated for the purpose of deception, the guilty party shall be fined and/or suspended or expelled.

Section 4. Receipt of Entries for Early Closing Events, Late Closing Events, States and Futurities. (1) An entry that is not [All entries—actually] received prior to [at] the hour of closing shall be Ineligible, except entries by letter bearing postmark not later than the following day (omitting Sunday). If [Entries—by] telegraph, telegrams to be actually received at the offices of sending at or before the hour of closing, such telegram to state the color, sex, and name of the horse, the close to be entered; also to give the name and residence of the owner and the party making entry. Whenever an entry or payment in a stake, futurity, or early closing race is [becomes] payable on a Sunday or a legal holiday that falls on Saturday, the [such] payment shall [is to] be due on the following Monday, and if made by mail the envelope shall [must] be postmarked on or before the following Tuesday. If a payment [is due] [fails] on a Monday that is a legal holiday, the [such] payment is due on Tuesday, and if made by mail [shall] [must] be postmarked on or before the following Wednesday.

(2) Postage meter. If [Where] an entry is received by letter bearing the postage meter date without a [any] postmark [placed thereon by the Post-Office Department], the [such] postage meter date shall be considered to be a postmark (for the purpose of this rule) if the letter is [actually] received within seven (7) days following the closing date of the event. A letter received later than seven (7) days following the closing date of the event shall not be considered a valid entry or payment. [Receipt subsequent to this time of an entry by letter bearing the postmark date shall not be a valid entry or payment to any event. The postmark date must conform to the postmark date as set forth above in order to be valid.]

Section 4, [6] Deviation from Published Conditions. An entry and payment [All entries and payments] not governed by published conditions shall be void and any [proposed] deviation from [such] published conditions shall be a violation of this administrative regulation. A [punished by a fine not to exceed fifty ($50) dollars for each offense; and] any nominator who is allowed privileges not in accordance with the published conditions of the race, or which are in conflict with the published conditions or with these rules, shall be barred [disqualified] from receiving [winning] any portion of the purse, and any person who knowingly allows the [the said nominator and the secretary or other persons who allowed such] privileges shall be in violation of this administrative regulation [deemed to have been parties to a fraud].

Section 5, [8] (1) Ineligible Horse [Where—ineligible—horse races] in a Stakes Race. A nominator shall be [is] required to guarantee the identity and eligibility of [the] entrant and declarations. If a nominator provides incorrect information, and if given incoherently he may be fined, suspended or expelled, and any winnings shall be forfeited and redistributed to eligible entries and the person who provided the information shall be in violation of this administrative regulation. A person who obtains [obtains] a purse or money through fraud or error shall surrender or repay the proceeds [pay the same] upon demand. If the proceeds are not repaid upon demand, the horse that was the subject of the fraud or error, and all persons involved, shall be [is] in violation of this administrative regulation and subject to suspension or revocation until repayment is made [scribed] together with the parties implicated in the wrong, and the horse or horses shall be suspended until such demand is complied with and such purse or money shall be suspended until such demand is complied with and such purse or money shall be awarded to the party justly entitled to the same. However, if a horse is declared [where any horse is] ineligible as a result of the negligence of the race secretary, the association [track] shall reimburse the owner for the resultant loss of winnings.

(2) [Where] Ineligible horse drawn into overnight race. The trainer shall be responsible for entering the horse in the race for which is the responsibility of the trainer to enter the horse in a race to which it is eligible. If [a] [in cases where the] ineligible horse [actually] deprives an eligible horse of the opportunity to run in a race [racing], the person responsible for the error shall be in violation of this administrative regulation [may be fined not more than $100. In all cases a hoisting shall be held to determine the person responsible for ineligible horses drawn in to race].

Section 6, [7] Transfer of Ineligible Horse. A horse entered in an event for which it is not eligible [in which it is ineligible] may be transferred to any event for [to] which it [he] is eligible at the same gait.

Section 7, [8] Withholding Purse on Ineligible Horse. An association [track] shall withhold [be warranted in witholding] the purse [premium] of any horse, with or without a formal protest, if the association receives [they receive] information[, in their judgment, tending to establish] that the entry or declaration was fraudulent or ineligible.

Section 8, [9] Agreement to Race Under Rule. An [Every] entry shall constitute an agreement that the horse to be entered and all persons associated with [or] person making it, the owner, lessee, manager, agent, nominator, driver, or other person having control of the horse[, and the horse] shall be subject to and shall abide by those [rule and] administrative regulations, and will submit all disputes and questions arising out of such entry to the authority and the judgment of this commission, whose decision shall be final.

Section 9, [10] Early Closing Events and Late Closing Races. (1) Date and place. The sponsor shall state the place and date [day] the event will be raced and no change in date, program, events, or conditions shall [can] be made after the nominations have been taken without the written consent of the owners or trainers [trainer] of all horses eligible at the time the conditions are changed.

Section 10, [11] Filing conditions. An entry blank shall be filled with the
Section 16.] In early closing races, late closing races, and overnight races requiring entry fees, all monies paid in by the nominators in excess of eighty-five (85) percent of the advertised purse shall be added to the advertised purse and the total shall then be considered to be the advertised purse. In addition to adding excess entry fees as provided in this section, [above] the sponsor shall add at least fifteen (15) percent to the advertised purses of late closing races and overnight races. Fifteen (15) percent of all monies paid in by the nominators shall be added to all early closing races by the sponsor.

Section 16. Penalties. Any person or association that violates any of the provisions of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:055, Section 4(1).

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 3 a.m.

PUBLIC HEARING: August 16, 2006
PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation governs the manner in which entries are taken at harness races.
(b) The necessity of this administrative regulation: The regulation is necessary to regulate entries into harness races.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the Kentucky Horse Racing Authority “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...” Additionally, KRS 230.250(3) grants the Authority “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 and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting.” This administrative regulation conforms to that statutory directive.

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 regulations.
regulation: This amendment primarily brings the language of the regulation into conformity with KRS Chapter 13A standards. It allows entries to be made by telephone as well as in writing, and clarifies the rules as to when a postmarked entry can be accepted by the Authority.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the regulation conforms to current practices regarding the conduct of stake and futurities races in the Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language in the regulation in conformity with the drafting standards in KRS Chapter 13A, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that the broad statutory goals are implemented in a proper manner with regard to entries into harness races.

(3) List the type and number of individual businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all licensed racetracks and pari-mutuels, as well as any facility or entity conducting or participating in harness racing, as well as the public who wager on these races.

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

(a) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No steps will have to be taken to comply with the administrative regulation; the regulation simply clarifies the rules pertaining to the races.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation of these races will be conducted according to a clearer body of rules.

(5) Provide an estimate of how much it will cost the administrative body 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: No additional funding required.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable here as the regulation applies equally to all entries into harness races.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: P. J. Cocksby

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2) vests in the Kentucky Horse Racing Authority "for cause 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..." Additionally, KRS 230.260(3) grants the Authority "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 and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting*.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. No budget impact.

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

811 KAR 1:050. Entries and starters; split races.

RELATES TO: KRS 230.215, 230.260(3) [230.630(4), (6), 230.640]

STATUTORY AUTHORITY: KRS 230.215, 230.260(3) [230.630(4), (6), (7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse [fe] races conducted under which [harness] racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate entries and starters; split races.

Section 1. (1) An association shall [tracke must] specify how many entries are required for overnight events and after the condition is fulfilled, the race shall be run (event must be contested) except when declared off as provided in 811 KAR 1:060.

(2) If six (6) or more betting interests are declared in to start an early closing event or a late closing event, the race shall be run (must be contested), except when declared off as provided in 811 KAR 1:060.

(3) In an early closing event, if fewer [less] horses are declared in than are required to start, and all declarers are immediately so notified, the horse or horses declared in and ready to race, and any scratched horse, shall be entitled to the sum of the entry fees submitted [all the entry money and any forfeits from each horse named].

Section 2. Elimination Heats or Two Divisions. (1) If [in any race where] the number of horses declared in to start exceeds twelve (12) on a half-mile track or sixteen (16) on a larger track, the association conducting the race shall have the option, before positions are drawn, of announcing that the race shall be run (race at the option of the track conducting same, stated before positions are drawn, may be raced) in elimination heats. A maximum of [No more than] two (2) tiers of horses, allowing eight (8) feet per horse, shall [will be] allowed to start in any race.

(2) If an early closing event or late closing event (a) Where the [race] is divided, each division shall [must] race for at least seventy-
five (75) percent of the advertised purse unless otherwise specified in the conditions of the race.

(6) In any added money early-closing event the race may be divided and raced in divisions and each division raced for an equal share of the total purse if, the advertised conditions so provide, provided, however, extended meetings shall add an additional amount so that each division will race for seventy-five (75) percent of the total of the advertised purse and added money. These provisions shall apply to any stake or early-closer with a value of $20,000 or less.

(3) If a [in any] stake race or futurity is divided pursuant to this administrative regulation, where the conditions of the race shall determine the number of starters per division and the purse distribution, it shall be declared that the event shall be run on a racetrack of less than a mile on an extended pari-mutuel meeting and where the total amount of horses declared in to start exceed twelve (12), the race, at the option of the racing association conducting the same, stated before positions are drawn, may be divided by lot and raced in two (2) elimination divisions with all money winners from both divisions competing in the final. Each division shall race one (1) elimination heat for thirty (30) percent of the total of the purse. The remainder of the purse shall be distributed to the money winners in the final.

Section 3. Elimination Plans. (1) [Whenever] elimination heats are required, or are specified in the published conditions, the [race] shall be run [where] in no case shall the conditions otherwise stated in the conditions or conducted under another section of this rule and administrative regulation. [That is. The field shall be divided by lot and.

(a) The first division shall race a qualifying dash for thirty (30) percent of the purse;

(b) The second division shall race a qualifying dash for thirty (30) percent of the purse;

(c) [and] These horses so qualified shall race in the main event for forty (40) percent of the purse; and

(d) [ ] The winner of the main event shall be the race winner.

(2) [In the event there are more horses declared to start than can be accommodated by the two (2) elimination dashes, then there will be added enough elimination dashes to take care of the excess. The percent of the purse raced for each elimination dash will be determined by dividing the number of elimination dashes into sixty (60). The main event will race for forty (40) percent of the purse.]

(3) Unless the conditions provide otherwise, if there are two (2) elimination dashes, the first four (4) finishers in each dashes qualify for the final; if there are (3) or more elimination dashes, not more than (3) horses will qualify for the final. The judges will draw the starting positions for which the horses are to start in the main event and shall determine which of the dash winners have the pole, and which the second position; which of the (2) horses that have been second shall start in third position, and which in fourth, etc. unless otherwise specified in the conditions of the race.

(4) [All] elimination dash [dashes] and the concluding heat shall be programmed to be run upon the same day or night, unless special provisions for earlier elimination dashes are set forth in the conditions.

(3) If [6] in the event there are three (3) or more separate heat or dash winners, those winners shall return for a single event race-off [and they shall compete] in order to determine the race winner. For that single event race-off, the participating horses shall be assigned [according to the conditions, they will take positions according to the order of their finish in the previous heat or dash.]

[6] In any race where the number of horses declared in to start exceeds twelve (12) on a half-mile track or sixteen (16) on a mile track, unless other numbers are specified in the conditions, the race, at the option of the racetrack members conducting the same, shall be divided, and each division may be divided by lot and raced in two (2) divisions with all heat winners from both divisions competing in a final heat to determine the race winner. Each division shall race two (2) heats for twenty (20) percent of the purse each heat. The remaining twenty (20) percent of the purse shall go to the winner of the final heat.

[7] Whenever elimination heats are required, or specified in the published conditions of a stake or futurity, each race may be raced on the below (3) heat plan, irrespective of any provisions in the conditions to the contrary, unless such published conditions provide otherwise. That is, the first division shall race for thirty (30) percent of the purse, the second division shall race for thirty (30) percent, and the horses qualifying in the first and second divisions shall race the third heat for thirty (30) percent of the purse. If, after the third heat, no horse has won two (2) heats, a fourth heat shall be raced by only the heat winners. The race winner shall receive the remaining ten (10) percent of the purse. The number of horses qualifying to return after each elimination heat shall be the same as set out in Section 3 of this administrative regulation.

Section 4. Overnight Events. [Net] More than nine (9) [eight (8)] horses shall not be allowed to start on a half-mile track in overnight events and [net] more than twelve (12) [ten (10)] horses shall not start on larger tracks at extended pari-mutuel meetings allowing eight (8) feet per horse, except in stakes races nine (9) starters shall be allowed on a half-mile track.

Section 5. Elimination [Qualifying] Race for Early Closing Event, Stake, or Futurity. If elimination, [set-] Where qualifying races are provided for in the conditions of an early closing event, stake, or futurity, the elimination [dash qualifying] race shall [must] be held in a timely fashion [not more than five (5) days prior to the main event] excluding Sunday and omitting the day of the race.

Section 6. Penalties. Any licensed person other than an association who violates any provision of the administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1095, Section 4(1). An association that violates any provision of this administrative regulation shall be subject to a fine of up to $5,000 per occurrence based upon the factual nature and seriousness of the occurrence.

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 a.m., at the South Park Track at the Visitor's Plaza, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3999.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: P. J. Cooksey,
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation
VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

governs the entries and starters into harness races.

(b) The necessity of this administrative regulation: The regulation is necessary to provide a clear set of rules governing entries and starters

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.280(3) grant the Authority the power to promulgate administrative regulations governing the conditions under which horse racing is conducted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation ensures that horse racing activities are conducted in a fair and secure 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: Primarily, the amendment makes only minor clarifications to the language of the regulation and serves primarily to bring this administrative regulation into conformity with KRS Chapter 13A drafting requirements. The amendment makes clear that if a stake or futurity is divided, the conditions of the race shall govern the number of starters per division and the purse division, and the rules covering divisions of races are simplified somewhat. A penalty provision is added to ensure consistency in the adjudication of violations of the horse racing regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.

(c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees of the Authority and all members of the general public who visit horse racing tracks will be affected.

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

(a) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new steps will be needed to comply with the regulations; the rules are primarily clarified and simplified.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Horse racing will be conducted in a fair and organized manner.

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

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

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not applied as the regulation applies equally to all entries and starters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Authority.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2) vests in the Kentucky Horse Racing Authority "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." Additionally, KRS 230.260(3) grants the Authority "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 and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting."
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first fiscal year the administrative regulation is to be in effect. No budget impact.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A
(c) How much will it cost to administer this program for the first year? No additional cost.
(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

811 KAR 1:055. Declaration to start; drawing horses.

RELATES TO: KRS 230.215, 230.260(1)(a), (3)
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), (6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate declarations to start and drawing horses.

Section 1. Declaration, (1)(a) Extended pan-mutual meetings. The declaration time shall be the time posted on the condition sheet [9 a.m. unless:]
1. Otherwise specified in the conditions; or
2. Approved in writing by the commission three (3) days prior to the day of the race.

(b) If another time is not specified in the conditions, starters shall be declared in-at-10 a.m.]
2. A horse shall not [be declared to] start in more than one (1) race on a racing day.
3. The time when declarations close shall be the time in use at the meeting.
4. The association [management] shall provide a locked box with an aperture through which declarations shall be deposited.
5. Responsibility for declaration box. (a) The presiding judge shall be in charge of the declaration box.
(b) The presiding judge shall have the authority to appoint the race secretary to draw races in his or her absence.
Section 2. Qualifying Races. At extended pari-mutuel meetings, declarations for overnight events shall be governed by the following:

1(a) Within thirty (30) days of being declared, a horse that has not raced previously at the gait chosen shall:
   1. Complete [go] a qualifying race in compliance with the conditions set forth by the association under the supervision of a judge holding a qualifying or associate judge's license for pari-mutuel meetings;
   2. Acquire at least one (1) charted line by a licensed charter.
   (b) Time and beaten lengths shall be determined by a standard photo finish
   (2a) The requirements [provision] of subsection (1) of this section shall apply to a horse that does not show a charted line for:
       1. The previous season; or
       2. Within its last six (6) starts.
   (b) Uncharted races contested in a heat [heats,] of more than one (1) dash, and consolidated according to subsection (4) of this section shall be considered one (1) start.
   (3a) The requirements [provision] of subsection (2) of this section shall not apply if a horse:
       1. Has raced at a charted meeting during the current season;
       2. Has [Gone] to meetings at which the races are not charted.
       (b) The information from the uncharted races may be:
           1. Summarized, including each start; and
           2. Consolidated in favor of charted times.
       (4) (a) If the race is less than [not-at-least] one (1) mile, the consolidation line shall carry date, place, time, driver, finish, track condition, and distance.
           (a) The judges shall require a horse that has been on the judge's [steward's] list to successfully complete [go] a qualifying race.
           (b) If a horse has raced in individual time not meeting the qualifying standards for that class of horse, the horse [has] may be required to successfully complete [go] a qualifying race.
           (6a) Except as provided by paragraph (b) of this subsection, if adequate competition is not available for a qualifying race, the judges may permit a fast horse to qualify by a timed workout that is consistent with the time of the races in which the horse will compete.
       (b) A horse shall qualify in a qualifying race if it is on the judge's [steward's] list for any of the following:
           1. Breaks; or
           2. Refusing to come to the gate;
           3. Poor performance;
           4. Being unmanageable, [c]
             (7) Qualifying races shall be:
               (a) Held at least one (1) week prior to the opening of a meeting of ten (10) days or more;
               (b) Scheduled as needed [twice-a-week] through the last week of the meeting
               (b) A race to qualify drivers and horses shall be charted, timed, and recorded.
               (b) A race to qualify only drivers shall not be required to be charted, timed, and recorded.
               (9a) Except as provided in paragraph (b) of this subsection, if a horse takes a win record in a qualifying race, the record shall be prefixed with the letter "Q".
               (b) The record shall not be prefixed with the letter "Q" if, immediately prior to or following the race, the horse has been submitted to an approved urine, saliva, or blood test.
               2. The preceding judge shall report the test on the judge's sheet.
       (10) Before it is permitted to start in a race with pari-mutuel wagering, a horse that fails to race at a charted meeting within thirty (30) days after having started shall:
           (a) Start in a charted race, or a qualifying race; and
           (b) Meet the standards of the meeting.
       (11) A horse shall not enter more than one (1) qualifying race per day.

Section 3. Coupled Entries. (1)(a) Except as provided by the provisions of this section, two (2) or more horses shall be coupled
as an "entry" if they are:
1. Owned or trained by the same person; or
2. Trained in the same stable by the same management.
(b) A wager on one (1) of the horses coupled as an "entry" shall be a wager on all horses in the "entry".
(2a) If a trainer enters two (2) or more horses, under bona fide separate ownerships or the same ownership, in the events specified in paragraph (b) of this subsection, the horses may race as a separate betting entry [entries] if:
1. The association has requested they be permitted to race as separate betting entries; and
2. The judges approve the request.
(b) This subsection shall apply to any [The events to which the provisions of this subsection apply shall be] stake, early or late closing event, futurity, free-for-all, or other special event.
(c) If more than one (1) horse is [The fact that the horses are] trained by the same person, that fact shall be stated prominently in the program.
(d) If the race is split in two (2) or more divisions,[
4.] horses in an "entry" shall be seeded insofar as possible, in the following order, by:
1. [a] Owners;
2. [b] Trainers; and
3. [c] Stables.
(e) [The] Divisions [in which they compete] and [their] post positions shall be drawn by lot.
(f) Elimination heats also shall be governed by the provisions of paragraphs (d) and (e) of this subsection.
(g) The presiding judge or the race secretary shall be responsible for coupling horses.
(h) If it is necessary to protect the public interest, horses that are separately owned or trained may be coupled for pari-mutuel wagering, and:
1. [a] Owners;
2. [b] Trainers; and
3. [c] Stables.
(i) The owner, lessor, or lessee, has a vested interest in another horse in the same race, it shall constitute an entry
Section 4. Also Eligibles. (1) [New] More than two (2) horses shall not [may] be drawn as also eligibles for a race.
(2) The [New] positions of also eligibles shall be drawn along with the starters in the race.
(3) If one (1) or more horses are excused by the judges, the also eligible horse shall:
(a) In handicap races in which the handicap is the same, take the place of the horse that it replaces;
(b) In handicap races in which the handicap is different, take the position on the outside of the horses with a similar handicap; and
(c) In other races, take the post position drawn by the horse it replaces.
(4a) A horse shall not be added to a race as an also eligible unless the horse was drawn at the time declarations closed.
(5a) A horse shall not be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list shall not be drawn without the permission of the judges.
(b) The owner or trainer of [such] a horse moved into the race from the also eligible list shall be notified that the horse is in to go [race].
([e]) The horse shall be posted at the race secretary's office.
(6) Horses on the also eligible list that are not moved into race by scratch time of the track [9 a.m., on the day of the race] shall be released.
Section 5. Preference. (1a) Preference shall be given in [all] overnight events according to a horse's last previous purse race during the current year.
(b) The preference date on a horse that has drawn to race and has been scratched shall be [the date of the race from which the horse was scratched].
(c) A horse is racing for the first time in the current year, the date of the first successful qualifier [declaration] shall be considered the horse's [tie] last race date, and preference shall be applied accordingly.
(3a) If an error has been made in determining or posting a preference date, and the error deprives an eligible horse of an opportunity to race, the trainer involved shall report the error to the racing secretary within one (1) hour of the announcement of the draw.
(b) If a preference date error has occurred, the race shall be redrawn.
Section 6. Judge's [Stewards'] List. (1) [a] A horse shall [may] be placed on a judge's [stewards'] list by the presiding judge if it is unfit to race because it [is]:
1. Is dangerous;
2. Is unmanageable;
3. Is sick;
4. Is lame; or
5. Is unable to show a performance to qualify for races at the meeting or.
6. Has exhibited repeated breaks.
(b) The owner or trainer shall be notified in writing when a horse is placed on a judge's list [of this action], and the specific item listed in paragraph (a) of this subsection upon which the action is based.
(c) Declaration on a horse placed on a judge's [stewards'] list shall be refused.
(d) If a horse is placed on a judge's [stewards'] list, the clerk of the course shall make a note on the electronic eligibility [certificate] of the horse stating the:
1. Date it was placed on the judge's [stewards'] list;
2. The reason it was placed on the judge's [stewards'] list; and
3. If the horse has been removed from the judge's [stewards'] list, the date of its removal.
(2) A presiding judge or other official at a nonextended meeting shall not remove from the judge's [stewards'] list and accept as an entry a horse that:
1. Has [Has] been placed on a judge's [stewards'] list; and
2. [Because he is a dangerous unmanageable horse,] Has not been removed from the judge's [stewards'] list because it is dangerous or unmanageable.
(b) A nonextended meeting may refuse declarations on a horse that has been placed on, but not removed from, a judge's [stewards'] list and not removed therefrom.
(c) A horse scratched from a race because of lameness or sickness shall not race for a period of seven (7) days beginning with the day of the scratch [enter another race for at least three (3) days from the date of the race from which the horse was scratched].
Section 7. Driver. (1) Declarations shall state the name of the horse's driver and also [who shall drive the horse and give] the driver's colors.
(2) A driver shall not be changed after scratch time [9 a.m.] of the track [day preceding the race], without the permission of the judges and a showing of good cause.
(3) If a nominator starts two (2) or more horses, the judges shall approve or disapprove the second and third drivers.
Section 8. (1) The presiding judge shall call a meeting of all horsemen on the grounds before the opening of an extended pari-mutuel meeting to appoint a committee to consist of the presiding judge, a representative of the association, and a representative of the Kentucky Harness Horsemen's Association to consider [for the election of a horsemen and an alternate to represent them on] matters relating to the withdrawal of horses due to bad track or weather conditions.
(2a) If track conditions are questionable due to weather, the presiding judge shall call a meeting of the committee formed in subsection (1) of this section [a committee consisting of an agent of the track member, the elected representative of the horsemen and himself].
(b) Upon unanimous decision by the committee that track conditions are safe for racing, unpermitted withdrawals shall not be made.
(3a) An entrant may scratch his [his] horse if:
1. A decision by the committee that the track is safe is not unanimous; and
- 940 -
2. The entrant [46] has posted ten (10) percent of the purse to be raced for.
   (b) A person who scratches a horse for a reason other than one (1) permitted by these administrative regulations shall be considered to be in violation of this administrative regulation.
   (c) If sufficient withdrawals are received to cause the field to be less than six (6), the association [track-member] shall have the right to postpone an early closing event or stake and cancel an overnight event.
   (4)(a) The money posted pursuant to subsection (4) of this section shall be forwarded to the Authority [commission].
   (b) The Authority [commission] shall determine whether a withdrawal was for good cause.
   (c) The money shall be:
      1. Forfeited [Retained as a fine.] if the Authority [commission] determines that the withdrawal was not for good cause; or
      2. Refunded if the Authority [commission] determines that the withdrawal was for good cause.

(5) This section applies [The procedures established by this section] only to the withdrawal of horses that have been properly declared in and does not apply [relate] to postponement as set forth in KAS 1:060.

Section 9. Length of Race and Number of Heats. (1) A race or dash shall be listed at a stated distance in units no shorter than one-sixteenth (1/16) of a mile.
   (2) The length of the race and the number of heats shall be stated in the conditions.
   (3) If a distance or number of heats is not specified, any race shall be a single mile dash except at fairs and meetings of a duration of six (6) days or less where they shall be conducted in two (2) dashes at one (1) mile distances.

Section 10. Two (2) Year Olds. [(4)] A two (2) year old shall not be permitted to:
   (1) [el] Start in a dash or heat exceeding one (1) mile in distance; or
   (2) [b] Race in more than two (2) heats or dashes per day.

Section 11. Penalties. (1) A licensed person who violates any provision of this administrative regulation shall have committed a Category 3 violation and shall be subject to the penalties set forth in KAS 1:055, Section 4(1).
   (2) An association that violates any provision of this administrative regulation shall be subject to a fine up to $5,000 per occurrence, based upon the factual nature and seriousness of the violation.
   (3) An unlicensed person who violates any provision of this administrative regulation shall have committed a Category 3 violation and shall be subject to the penalties set forth in KAS 1:055, Section 4(3).

(2) A violation of subsection (4) of this section shall subject the:
   (a) Owner to a fine of not less than twenty-five ($25) dollars; and
   (b) The owner to the forfeiture of any winnings.

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLEY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the hearing shall notify the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation establishes the procedures for declarations to start and drawing horses.
   (b) The necessity of this administrative regulation: The regulation is necessary to establish a consistent and organized procedure for declarations to start and drawing horses.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and KRS 230.260(2) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. The administrative regulation ensures that horse races are governed by a consistent body of rules concerning postponements.

(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 primarily makes clarifications to the language of the regulation and serves to bring this administrative regulation into conformity with KRS Chapter 13A drafting requirements. It also adds that a horse may be placed on the judge’s list (i.e., prohibited from racing) for exhibiting repeated breaks.
   (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.

(3) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.

(4) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.

(5) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons conducting or participating in horse races are affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No steps for compliance are required; the regulation is merely clarified.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No direct cost increase; some owners will have their horses placed on the judge’s list for exhibiting repeated breaks, but this will have limited impact overall.

(7) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear rules are established concerning declarations to start and drawing horses.

(8) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: No cost.
   (b) On a continuing basis: No cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering is not applied as the regulation applies equally to all persons conducting or participating in horse racing meetings.

FISCAL NOTE ON State or LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2) and KRS 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

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

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

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

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

811 KAR 1:060. Postponement; rescheduling, purses.


STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3) [230.630(3)(4),(7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate postponement of races.

Section 1. In case of unfavorable weather, or other unavoidable cause, associations [tracks] with the consent of the judges shall postpone races in the following manner:

(1) Early closing races, stakes, and futurities; all shall be postponed to a definite hour the next fair day and good track.

(2) [Any] late closing race, early closing race, [and] stake, or futurity (except as provided in subsections (4) and (5) of this section) that cannot be raced during the scheduled meeting shall be declared off and the entrance money and forfeits shall be divided equally among the competitors who have horses declared in and eligible to start.

(3) [Any] late closing race or early closing race that has been started and remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary. A late closing race or early closing race [any such race] that has been started but postponed by rain earlier in the meeting may be declared ended and the full purse divided according to the summary.

(4) Stakes and futurities shall [should] be raced where advertised and the race meeting, if necessary, shall [may] be extended. [To accomplish this any] stake or futurity that has been started and remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary except where the association [track] elects to extend the meeting to complete the race. A horse that is [horses that are] scratched after a heat and before a race is declared finished shall [must] not participate in purse distribution from subsequent heats [in the event the race is called off and declared finished].

(5) Unless otherwise provided in the conditions of the race, to transfer stakes and futurities to another meeting] unanimous consent shall [must] be obtained from the association [track] and from [all] those with [having] eligibles in the event before stakes races and futurities may be transferred to another meeting

(6) At meetings of more than five (5) days duration, overnight events may be postponed and carried over for a maximum of [not exceed] [two (2) racing days].

(7) At meetings of [a duration of] five (5) days duration or less, overnight events and late closing races shall be cancelled and starting prices shall be refunded in the event of postponement, unless the track adds [is willing to add] the postponed races to the advertised program and such races are held within [two (2) weeks of cancellation [for subsequent days of the meet]].

(8) At the option of management any Postponed races may, at the option of the association, be contested in single mile dashes. If [Where] races are postponed under this administrative regulation, management shall select the shortening of a race of the order in which the events shall [will] be raced in any combined program.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner
WILLIAM STREET, Chairman

APPROVED BY AGENCY: August 14, 2006
FILED WITH LPC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7750, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures for postponements in horse races

(b) The necessity of this administrative regulation: The regula-
tion is necessary establish a consistent and organized procedure for postponing, rescheduling, and purses

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant
the Authority power to promulgate administrative regulations gov-
erning the conditions under which horse racing is conducted.

(d) How this administrative regulation currently affects or will
assist in the effective administration of the statutes: The admin-
istrative regulation ensures that horse races are governed by a
consistent body of rules concerning postponements.

(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: The amendment makes only clarifications to the lan-
guage of the regulation and serves to bring this administrative
regulation into conformity with KRS Chapter 13A drafting require-
ments.

(b) The necessity of the amendment to this administrative
regulation: The amendment is necessary to ensure that the lan-
guage used in the administrative regulation is precise and clear.

(c) How the amendment conforms to the content of the auth-
orizing statutes: By clarifying the language used in this admin-
istrative regulation, the amendment enhances the statutory goal of
KRS 230.215(1) of properly regulating the conduct of horse racing
in Kentucky.

(d) How the amendment will assist in the effective administra-
tion of the statutes: Same as (2)(c) above.

(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this admin-
istrative regulation: All persons conducting or participating in horse
races are affected.

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

(a) List the actions that each of the regulated entities identified in
question (3) will have to take to comply with this administrative
regulation or amendment: No steps for compliance are required;
the regulation is merely clarified.

(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3)? No cost.

(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): Clear rules are established con-
cerning the postponement and rescheduling of races, and the
purses involved.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: N/A

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

(e) Whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: N/A

(f) TIERING: Is tiering applied? Tiering is not applied, as the
regulation applies equally to all persons conducting or participating
in horse racing meetings.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
service, or requirements of a state or local government (including
cities, counties, fire departments, or school districts)? No

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

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

4. Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for subsequent years?

(c) How much will this program cost to administer the first year?

(d) How much will it cost to administer this program for sub-
sequent years?

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection
Kentucky Horse Racing Authority

(Amendment)

811 KAR 1:065. Starting.

RELATES TO: KRS 230.215, 230.260(1) [230.630(7)], (9),
230-940.

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)
[230.630(9), (4), (7)].

NECESSITY, FUNCTION, AND CONFORMITY: KRS
230.215(2) and 230.260(3) authorize the Authority to promulgate
administrative regulations prescribing the conditions under which
horse racing is conducted (including harness racing) racing shall be
conducted in Kentucky. The function of this administrative regula-
tion is to regulate starting of races.

Section 1. With Starting Gate. (1) Starter’s control. The starter
shall have control of the horses from the formation of the parade
until [he, she] word, “go,” is given.

(2) Scoring. After one (1) or two (2) preliminary warming up
scores, the starter shall notify the drivers to proceed [fasten-then-strap
and come] to the starting gate. During or before the parade, the drivers shall [must] be informed as to the number of
scores permitted.

(3) A horse [The horse] shall not be brought to the starting
gate nearer than one eighth (1/8) of a mile before the start, [track
on parade] safety [as the same is used in]

(4) [Speed of gate. Allowing sufficient time so that the speed of
the] gate can be increased gradually, the following minimum
speeds will be maintained:

(a) For the first one eighth (1/8) mile, not less than eleven (11)
miles per hour.

(b) For the next one sixteenth (1/16) of a mile, not less than
eighteen (18) miles per hour.

(c) From that point to the starting gate, the speed will be
gradually increased to maximum speed.

(6) On mile tracks, a horse shall [horse will] be brought to the
starting gate at the head of the stretch [and the relative speeds
mentioned in subsection (4) of this section will be maintained].

(7) The starting point shall [will] be a point on the inside
rail a distance of not less than 200 feet from the first turn. The
starter shall give the word “go” at the starting point.

(8) [If] When a speed has been reached in the course of a
start there shall be no decrease except as the result of a recall.

(9) Recall notice. If [in case of] a recall is necessary, a light
plainly visible to the driver shall be flashed and a recall
sound and, wherever possible, the starter shall leave the wings
of the gate extended and gradually slow the speed of the gate
to assist in stopping the field of horses. The starter may [in an-em-
ergency, however, the starter shall use his discretion to] close the
wings of the gate if an emergency situation arises.
(6) ([9]) There shall be no recall after the word, "go," has been given and any horse, regardless of [his] position or [an] accident, shall be deemed a starter from the time the horse enters [he-enters] into the starter's control, unless dismissed by the starter or judges.

(9) ([10]) Breaking horse. The starter shall endeavor to start [get] all horses [away] in position and on gait, but a recall shall not be sounded [no recall shall be had] for a breaking horse.

(10) ([11]) Recall; reasons for. The starter may sound a recall only for the following reasons:
(a) A horse scores ahead of the gate;
(b) There is interference;
(c) A horse has broken equipment;
(d) A horse falls before the word "go" is given;
(e) There is a malfunction of the starting gate;
(f) A horse comes to the gate out of position;
(g) A circumstance arises which will not allow a fair start, as determined by the starter.

(11) Any driver committing any of the following offenses shall be in violation of this administrative regulation: (12) Penalties. A fine not to exceed $100 or suspension from driving not to exceed fifteen (15)-day[s] may be imposed by the starter for:
(a) Delaying the start;
(b) Failing [Failure] to obey the starter's instructions;
(c) Rushing ahead of the inside or outside wing of the gate;
(d) Coming to the starting gate out of position;
(e) Crossing over before reaching the starting point;
(f) Interfering [Interference] with another driver during the start;
(g) Failing [Failure] to come up into position.

(12) ([13]) Riding in gate. Unless granted permission by the presiding judge, persons other than the starter, the starter's driver or operator, and a patrol judge [No persons] shall not be allowed to ride in the starting gate [except the starter and the driver or operators] and a patrol judge unless permission has been granted by the commissioner.

(13) [([14])] Loudspeaker. Use of a mechanical loudspeaker for any purpose other than to give instructions to drivers shall be [is] prohibited. The volume shall not be [is] higher than necessary to carry the voice of the starter to the drivers.

(15) The penalty for violation of the section shall be a fine of not to exceed $500 or suspension not to exceed thirty (30) days, after a hearing by the commissioner. A hearing must be granted before any penalty is imposed.

Section 2. Holding Horses Before Start. A horse shall not [Horses may be] be held on the backstretch for more than [not to exceed] three (3) minutes awaiting post time, except when delayed by an emergency or by permission of the judges.

Section 3. Two (2) Tiers. (1) [In-the-event] there are two (2) tiers of horses, the withdrawal [withdrawal] of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier.

(2) (a) If [Whenever] a horse is drawn from any tier, horses on the outside shall [move-in-to] fill [up] the vacancy.
(b) If a horse has drawn a post position in the second tier, the driver of such horse may elect to score out behind any horse in the first tier, so long as the driver does not interfere with another trailing horse or deprive another trailing horse of a drawn position.

Section 4. Starters. A horse [Horses] shall be deemed to have started when the word, "go," is given by the starter and a horse shall be required to complete [all the horses must go] the course except in case of [an] accident, broken equipment, or other circumstance in which, [in (ie) the opinion of the judges, [that] it is impossible or unsafe to complete [to go] the course.

Section 5 Unmanageable Horse. (1) If, in the opinion of the judges or the starter, a horse is unmanageable or may [likely to] cause accidents or injury to another [any other] horse or to any driver, it may be sent to the barn. If a horse is sent to the barn [when the action is taken], the starter shall [will] notify the judges, who shall then [will in turn] notify the public.

(2) A horse shall be considered unmanageable if it [such a horse] causes more than one (1) recall in the same dash or heat [in which case it [and such horse] may be excused by the starter and sent to the barn.

Section 6. Bad Acting Horse. At any meeting [meetings] where there is no wagging, the starter may place a bad acting horse on the outside [at the discretion]. At any pari-mutual meeting, this [meetings such] action may be taken only when [where] there is time for the starter to notify the judges who shall [will] in turn notify the public prior to the sale of tickets for the [such horse] race. If tickets have been sold, the bad acting horse must be scratched under the provisions of Section 5 of this administrative regulation.

Section 7. Post Positions; Heat Racing. The horse winning a heat shall take the pole (or inside position) in the succeeding heat, unless otherwise specified in the published conditions, and all others shall take their positions in the order they were placed in the last heat. When two (2) or more horses finish [is] [have made] a dead heat, their positions shall be settled by lot.

Section 8. Shield. The arms of a [all] starting gate [gates] shall be provided with a screen or a shield in front of the position for each horse, and the [such] arms shall be perpendicular to the rail.

Section 9. If a horse comes to the gate out of its assigned post position and gains an unfair advantage by moving either to the left or right to its assigned post position before the starter gives the word, "go," that horse may be disqualified and placed by the judges.

Section 10. Malfunction of the Gate. A [Every] licensed starter shall [is required to] check the [his] starting gate for malfunctions before each race as an agreed meaning and shall [is] practice the procedure to be followed in the event of a malfunction. Both the starter and the driver of the gate shall [must] know and practice emergency procedures, and the starter shall [is] responsible for the training of drivers in the [such] procedures.

Section 11. Penalties. Any person or association that violates any of the provisions of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1-095, Section 1.
Contact Person: Jim Gallagher

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets the rules that govern the official start of race, including the procedure to be followed if a start has to be recalled.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order that the Authority effectively control harness racing.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the Kentucky Horse Racing Authority "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." Additionally, KRS 230.260(3) grants the Authority "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 and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting." This administrative regulation conforms to that statutory directive.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is vital in order that harness racing in Kentucky be effectively monitored and operated smoothly. It is imperative that all races start uniformly and fairly.
(2) If this is an amendment to an existing regulation, provide a brief summary of:
(a) How this amendment will change the existing administrative regulation: This amendment modernizes and refines the existing process for starting races and conforms it to current standards and Chapter 13A drafting principles. Additionally, this amendment adds several reasons for re-starting races that are not contained in the current regulations.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order that the standards set by the regulations meet current industry standards.
(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "prescribe necessary and reasonable... regulations... under which horse racing... shall be conducted." KRS 230.260(3).
(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Authority to more effectively control horse racing by modernizing the rules regarding the acceptance and recording of entries.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all racing associations, licensees, farms, stables and persons in any way connected to standardbred racing, including the wagering public.
(4) Provide an analysis of how the entities identified in Question (3) will be impacted by either the implementation of this administrative regulation, if new, or by change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: It is not anticipated that compliance with this amendment to the regulation will result in any substantial change in duties on the part of the entities identified in question (3).
(b) In complying with this administrative regulation or amendment, how much will it cost to each of the entities identified in question (3)? No cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? All of the entities listed will benefit since this amendment to the regulation will result in standardbred racing operating more efficiently and in conformity with current standards within the industry.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No increase in cost.
(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: There will be no additional costs incurred in implementing this amendment.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by change if it is an amendment: No increase in funding.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not increase any fees.
(9) TIERING: Is tiering applied: No, tiering does not apply to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years?
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

811 KAR 1:075. Racing and track rules.


STATUTORY AUTHORITY: KRS 230.215(2), [240.240(2), 230.260(3), 230.320(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(1) (6), the Authority (commission) the authority to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.320(1) authorizes the Authority to promulgate administrative regulations setting out the conditions under which licenses may be denied, revoked, or suspended. The function of this administrative regulation is to regulate harness racing, track rules, and proper conduct.

Section 1. [Although] A leading horse is entitled to any part of the track, however, [except] after selecting a [he] position in the home stretch, neither the driver of the first horse or any other driver in the race shall do any of the following things, which shall be con-
sidered violation of driving rules:
(1) Change either to the right or left during any part of the race when another horse is so near him or her that in altering his position [his position] he or she compels the horse behind him to shorten strides [his strides], or causes the driver of any other horse to pull him or her out of his or her stride;
(2) Jostle, strike, hook wheels, or interfere with another horse or driver.
(3) Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner, endangering other drivers;
(4) Swerve in and out or pull up quickly;
(5) Crowd a horse or driver by "putting a wheel under him";
(6) "Carry a horse out" or "sit down in front of him", take up abruptly in front of other horses so as to cause confusion or interference among the trailing horses, or do any other act which constitutes what is commonly known as "helping";
(7) Allow [Let] a horse to pass inside needlessly or otherwise help another horse to improve its position in the race;
(8) Lay [Laying] off a normal pace and leave [leaving] a hole when it is well within the horse's capacity to keep the hole closed;
(9) Commit an act which impedes [shall-impede] the progress of another horse [causes] the horse to "break";
(10) Change course after selecting a position in the home stretch and swerve in or out, or bear in or out, in a manner which interferes [as to interfere] with another horse or causes [cause] the horse to change course or take back;
(11) [To] Drive in a careless or reckless manner or fail to maintain reasonable control of the horse at all times during the race.
(12) Whip [Whipping] under the arch of the sulky;
(13) Cross [Crossing] the inside limits of the course; or [and]
(14) Fail [Failing] to sit or maintain a pace comparable to the class being raced. Traveling in which they are racing. Failure to do so by going an excessively slow quarter or any other distance that changes the normal pattern, overall timing, or general outcome of the race shall be considered a violation of this section.
(15) Kick a horse. Removal of a foot from the stirrups in and of itself shall not constitute the act of kicking.

Section 2. (1) A horse or a horse's sulky that [if at a racetrack which has pylon demarcations, a horse or the horse-sulky] leaves the course by brushing, running over, or going inside of a pylon demarcation shall have violated this administrative regulation. If, the pylons that horse may be penalized by a disqualification if in the opinion of the judges [the action]:
(a) The action results in [Gave] the horse gaining an unfair advantage over other horses in the race; or
(b) The action helps [Helped] the horse improve its position in the race;
(c) The driver goes inside the pylons and does not immediately correct position.
(2) A horse [Horses] using the inside to pass shall have complete clearance of the pylons.
(3) A driver [Driver] striking pylons but not gaining an unfair advantage may be cited for a violation of this administrative regulation [fixed].
(4) If [When] an act of interference causes a horse or part of a horse's [the horse's] sulky to be in violation of this administrative regulation [these rules] and the horse is disqualified, the offending horse shall be placed behind the horse with which it interfered.

Section 3. Complaints, Reports of interference. (1) Complaints.
(a) A [Any] complaint by a driver relating to driving or other misconduct during a heat shall be made at the conclusion of the heat, unless the driver is prevented from doing so by an accident or injury.
(b) A [Any] driver desiring to enter a claim of foul or other complaint of violation of the rules [shall, before dismissing, indicate to the judges the driver's intention [his desire] to enter a claim or complaint, and immediately upon dismissing the driver shall proceed to the telephone or judges' stand where the claim, objection, or complaint shall be immediately entered.
(c) The judges shall not cause the official sign to be displayed until the claim, objection, or complaint has [shall-have] been entered and considered.
(2) Report of interference. A driver shall report any interference to himself or herself or to the driver of the [his] horse by another horse or driver during a race to the designated official.

Section 4. If a violation is set forth in Section 1 or 2 of this administrative regulation [as any of the above violations are] committed by a person driving a horse coupled as an entry in the betting, the judges shall set both horses back, if, in their opinion, the violation may have affected the finish of the race. Otherwise, penalties may be applied individually to the drivers of any entry.

Section 5. [Penalties. For a violation of Section 1 or 2 of this administrative regulation:]
(1) The offending horse shall be:
(a) Placed back one (1) or more places in the heat or dash behind the horse with which the horse interfered; or
(b) Disqualified from receiving any winnings if any horse is prevented from finishing as a result of the violation; or
(2) The offending driver may be:
(a) Fined, not to exceed the amount of the purse;
(b) Suspended, or
(c) Expelled.

Section 6. Unsatisfactory Drive; Fraud. (1) [A] [Every] heat in a race shall be fairly contested by each horse in the race and each horse shall be driven to the finish.
(b) It shall be a violation of this administrative regulation for a horse to be [The judges shall consider it to be a violation if they believe that a horse was being driven]:
1. With design to prevent the horse from winning a heat or dash which the horse was evidently able to win;
2. In an inconsistent manner; or
3. To penetrate [perpetuate] or to aid in a fraud.
(c) [The driver, and anyone else acting in concert with him to so-effect the outcome of the race or races may be fined, suspended, or expelled.]
(d) The judges may substitute a competent and reliable driver at any time prior to the start of the heat or race.
(e) [The substitute driver shall be paid from the purse money due to the horse.]
(f) In the event a drive is unsatisfactory due to lack of effort or carelessness, and the judges believe that there is no fraud, gross carelessness, or a deliberate and intentional drive, they may impose a penalty under the subsection not to exceed ten (10) days suspension or a $100 fine.

Section 6, [7.] (1) [A] [Every] driver may be removed and another driver substituted [at any-time] after the positions have been assigned in a race if, in the opinion of the judges, a driver [is] [for any reason]:
(a) Is unfit or incompetent to drive; or
(b) Refuses to comply with the directions of the judges; or
(c) Reckless in his or her conduct and endangers the safety of horses or other drivers in the race.
(2) The offending driver shall be fined, suspended, or expelled. The substitute driver shall be properly compensated.

Section 7, [8.] If, for any cause other than being interfered with or broken equipment, a horse fails to finish after starting in a heat, that horse shall be ruled out.

Section 8, [9.] [A] [Loud] shouting or other improper conduct shall be [or] forbidden during [in] a race.
(2) A driver shall be allowed to remove a foot from the stirrup temporarily for the purpose of pulling earing [After the word "s" is given, both feet must be kept in the stirrups until after the finish of the race].

Section 9. Whipping. (1) [A] [Driver [Drivers] shall be allowed a whip [white] not to exceed four (4) feet [eight (8) inches], plus a snapper not longer than six (6) [eight (8)] inches.
(2) [A] [Person shall not use [Section 11] The use of any goading device, chain or mechanical device, or appliance, [device or appliance], other than the ordinary whip or crop upon a (any) horse.
In any race, training exercise, or while on association grounds[,] shall constitute a violation of the administrative regulation. [33(a) [Section 12–(14)] The brutal use of a whip or crop or excessive or indiscriminate use of the whip or crop during a race, training exercise, or while on association grounds shall be prohibited [considered a violation and shall be punished by a fine, suspension, or both].

[b) [35] A driver may use a whip only in the conventional manner.

c) [36] Welfs, cuts, or whip marks on a horse resulting from whipping shall constitute a prima facie violation of this section.

d) [37] A driver shall be (4) [Drivers are] prohibited from:
1. [38] Whipping a horse under the arch or shafts of the sulky;
2. [39] Kicking a horse;
3. [40] Punching a horse;
4. [41] Jabbing a horse; [or]
5. [42] Using the whip so as to interfere with or cause disturbance to any other horse or driver in a race;

6. Whipping a horse after a race, or
7. Whipping a horse that is exhausted or no longer in contention in the race.

(a) A driver shall keep a line in each hand from the start of the race until the top of the homestretch finishing the race. [65] Violation of the section shall be punished by a fine, suspension, or both.

The penalty for keeping a horse shall be a fine of five ($5) days suspension for the first offense and ten (10) days for each offense thereafter.]

Section 10, [43] (1) [A] [No] horse shall not wear hopples in a race unless it starts in hopples in the first heat

(2) Having so started, the horse shall continue to wear them to the finish of the race.

(3) [A] [Any] person removing or altering a horse's hopples during a race, or between races, for the purpose of fraud, shall be considered to be in violation of the administrative regulation [suspended or expelled].

(4) [A] [Any] horse habitually wearing hopples shall not be permitted to start in a race without them except by permission of the judges.

(5) [A] [Any] horse habitually racing free-legged shall not be permitted to wear hopples in a race except by [with] the permission of the judges.

(6) A horse shall not be permitted to wear a head pole protruding [more than ten (10)-inches] beyond its nose.

Section 11, [44] Breaking (1) [If] a [When any] horse breaks [or horses break] from its [their] gate in trotting or pacing, the driver [their driver] shall at once, where clearance exists, take the horse to the outside and pull it to its gate.

(2) The following shall be considered a violation of [subsection (4) of this section:]

(a) Failure to properly attempt to pull the horse to its gate[;]

(b) Failure to take to the outside where clearance exists[;]

(c) Failure to lose ground by the break[; or]

(d) Failure to prevent extended break.

(3) If there has been no failure on the part of the driver in complying with subsection (2) of this section, the horse shall not be set back unless a contending horse on its [his] gate is tapped on the hind quarter of the breaking horse at the finish.

(4) A driver shall not allow a horse to break for the purpose of fraudulently losing a heat.

If [in-the-opinion-of-the-judges] a horse or driver's actions cause [cause] another horse to be off-stride at the wire, the offending horse shall be placed behind the horse with whom it interfered [with] after [any-]or all other placements have been made [resulting-place].

(6) A [66] [Any] horse making a break, which causes interference with other contesting horses, shall be placed behind any or all offended horses.

(7) [67] The judges may set a [any] horse back one (1) or more places if a violation of this section has [in their judgment, any of the above violations] been committed.

Section 12, [48] If, in the opinion of the judges, a driver allows his horse to break for the purpose of fraudulently losing a heat, he shall be liable to the penalties established in Section 5-(2) of this administrative regulation.

Section 16. To assist in determining the matters contained in Sections 14 and 16 of this administrative regulation, it shall be the duty of one (1) of the judges to call out every break made, and the clerk shall at once note the break and its character [of-] in writing.

Section 13. [17] The time between separate heats of a single race shall not be less than forty (40) minutes. [A] [No] heat shall not be called after sunset if [where] the track is not lighted for night racing. The time between races shall not exceed thirty (30) minutes.

Section 14. A horse [48] [Horses] called for a race shall have the exclusive right of the course, and all other horses shall vacate the track at once, unless permitted to remain by the judges.

Section 15. If [49] [Should] any horse in the current program fall or run uncontrollably [get-loose] on the track or if [be] involved in an accident or any kind, after starting to warm up, the horse shall [will] only be permitted to start only after examination and approval by the Authority [commission] veterinarian.

Section 16. If an accident occurs, the judges shall allow adequate time in between posts to clear the track. A driver involved in an accident shall be cleared by an emergency medical technician or paramedic before resuming driving engagements [20] in the case of accidents, adequate time shall be allowed as the judges may deem necessary and proper.

Section 17, [24] A driver shall be seated [mounted] in his sulky at the finish of the race or the horse shall be placed as not finishing.

Section 18, [22] It shall be the responsibility of the owner and trainer to provide every sulky used in a race with uncolored or colorless wheel discs on the inside and outside of the wheel of a type approved by the Authority [commission]. [In his discretion]. The presiding judge may order the use of mud guards which shall be provided by the owners or trainers.

Section 19, [23] Sulky. A sulky shall not be used in a race, unless it meets the requirements of the rules and regulations of the United States Trotting Association, 2005. Rule 18. Section 25, "Sulky Performance Standards" [Only sulkies of the conventional dual-shaft and dual-hitch type are permitted to be used in any race]. A conventional type sulky is one having two (2) -shafts which shall be parallel to, and securely hitched on each side of the horse. No point of hitch or any part of a shaft shall be above a horizontal level equal to the lowest point of the horse's back.

Section 20. Helmets. A protective helmet, securely fastened under the chin and meeting the Small Foundation standards for protective harness racing headwear, shall be worn at all times on the premises of the Association when:

1. Racing, parading, or warming up a horse prior to racing;

2. Jogging, training, or exercising a horse at any time.

Section 21 Safety Vests. (1) A safety vest shall be worn when racing, parading, or warming up a horse prior to racing,

(a) The safety vest shall:

1. Cover the torso, front and back, from the collar bone to the hip bone.

(b) Be of uniform material and thickness over the whole of the vest except for:

1. Localized variation due to pattern, as, for example, quilting;

2. Thicker areas to aid fit, as, for example, under the arms, at fastenings, and at edges; and

3. Thicker areas in regard to particularly sensitive areas of the body, for example, the spine.

(c) Equal or exceed a minimum shock absorption rating of five
(5) according to the specifications established by the British Equestrian Trade Association (BETA), which are as follows.

1. Use a conical height apparatus to measure the maximum deceleration on impact of a striker consisting of a spherical indenter weighing five and nine-tenths (5.9) (plus or minus 0.05) kilogram with a diameter of 215 (plus or minus two (2)) millimeters.

2. Condition the vest and the striker for a minimum of three (3) hours at twenty-three (23) degrees plus or minus two (2) degrees Celsius.

3. With the vest lying on a smooth, flat, massive concrete base with the inside of the vest facing the striker and positioned so that the striker will impact on an area of typical thickness, not reinforced by additional material, raise and release the striker starting at a height of two-tenths (0.2) meters and increasing the height by increments of two-tenths (0.2) meters to a height which will result in a deceleration of over 300 gravity units (10 x 31.1 m/s to 10 x 31.1 m/s), as measured by recording the signal from an accelerometer through the impact from the time before the striker impacts the vest until the accelerometer returns to the same level as before the impact.

4. Record the gravity units measured at each height increment on a line graph that has the gravity units in ascending order on the y-axis and the deceleration in meters in ascending order on the x-axis.

5. Plot the height in meters at which the deceleration reached 300 gravity units.

6. Multiply the height obtained in paragraph 5 of this subsection by ten (10) to calculate the shock absorbance rating.

Section 22. Track Rules. (1) An association shall have the authority to establish track rules provided that the rules do not conflict with the administrative regulations in 811 KAR Chapter 1.

2. A set of proposed track rules shall be submitted in writing to the Authority thirty (30) days prior to the scheduled meeting.

3. A violation of a track rule may be cited by either the judges or the Authority.

4. Track rules shall be prominently posted at appropriate locations within the enclosure.

Section 23. Penalties. (1) A horse that violates Section 1 or 2 of this administrative regulation shall:

(a) Be placed back one (1) or more positions in the heat or dressage behind the horse with which the horse interfered; or

(b) Be disqualified from receiving any winnings, if a horse is prevented from finishing as a result of the violation; or

(c) Be placed last among finishing horses, if a horse which the violating horse interfered with fails to finish the race due to a separate and unrelated incident.

2. A person or association that violates any section of this administrative regulation shall have committed a Category 1 violation and shall be assessed the penalties set forth in 811 KAR 1:095, Section 4(1), unless, in the opinion of the judges, the violation was committed with the intent to alter or affect an outcome of a race or with the intent to defraud, in which case it shall be deemed to be a Category 3 violation and subject to the penalties set forth in 811 KAR 1:095, Section 4(2).


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.

3. This material may also be obtained from the Kentucky Horse Racing Authority Web site, www.khra.ky.gov. (24). Repeated Violations. Repeated violations of this administrative regulation shall be considered grounds for refusal to grant or grounds for revocation of any driver's license.

Section 25. Any violation of any section of this administrative regulation, unless otherwise provided, may be punished by a fine or suspension, or both, or by expulsion.

JOHN W. CLAY, Deputy Secretary

CHRISTOPHER L. LILLY, Commissioner
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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. 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 Monday, October 2, 2006. Please send written notification of intent to public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

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 rules and procedures regarding the rules of the track.

(b) The necessity of this administrative regulation: The administrative regulation is necessary in order that the Authority effectively control harness racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.212(2) vests in the Kentucky Horse Racing Authority "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." Additionally, KRS 230.260(3) grants the Authority "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 and to fix and regulate the minimum amount of purses, stakes, or allowances to be offered for the conduct of any horse race meeting." This administrative regulation conforms to that statutory directive.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is vital in order that harness racing in Kentucky be effectively monitored and operate smoothly. This rule encompasses all aspects of standardbred racing.

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

(a) How this amendment will change the existing administrative regulation: This amendment seeks to bring the rules of standardbred racing in line with current industry standards. Sulky performance standards are being added to the existing rule. Additionally, a rule requiring that drivers wear flame jackets is being inserted.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order that the standardbred regulations meet current industry standards.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "prescribe necessary and reasonable regulations..., under which horse racing... shall be conducted." KRS 230.260(3).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Authority to more effectively control horse racing by improving and modernizing...
the rules relating to the vital area of licensing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation; This regulation affects all racing associations, licensees, farms, stables, and persons in any way connected to standardbred racing, including the wagering public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation sets out the responsibilities and the duties of drivers to maintain safety standards in standardbred racing.

(b) In complying with this administrative regulation or amendment, how much will it cost to each of the entities identified in question (3)? Drivers are responsible for wearing flak jackets and they are responsible for the cost of purchasing them.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? All of the entities listed will benefit, since this amendment to the regulation will result in standardbred racing operating more safely, efficiently and in conformity with current standards within the industry.

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

(a) Initially: There will be a minor increase in cost to drivers, since they are being required to pay for the flak jackets that will be required by the amendment to this regulation.

(b) On a continuing basis: See (a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The additional cost shall be borne by the license applicant.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

811 KAR 1:080. Placing; money distribution.

RELATES TO: KRS 230.215, 230.250(1) [230.630(1)(-)(9), 230.640]

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), 230.261(1) [230.630(2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.261(1) authorizes the Authority to promulgate regulations concerning the pari-mutuel wagering system. The function of this administrative regulation is to regulate the conditions, placing, and money distribution.

Section 1. Unless otherwise provided in the conditions, all purses shall be distributed on the dash basis with the money awarded according to a horse's position in each separate dash or heat of the race. Pursue money distribution in overnight events shall be limited to five (5) monies.

Section 2. Dashes. (1) Except in the case of stakes or futurities as set forth in [811 KAR 1.040], unless otherwise specified in the conditions, the money distribution in dashes shall be in the following percentages: fifty (50) (fifty-five (55), forty-five (45), twenty-five (25), twelve (12), eight (8), fifteen (15), ten (10) and five (5)).

(2) In early closing races, late closing races, or added money events, if there are less than five (5) starters, the remaining purses [premium] shall go to the race winner unless the conditions call for a different distribution.

(3) In overnight events, if there are less than five (5), starters the purses [premium] for the position for which there are no starters may be retained by the track.

(4) If there is a purses [be any premium or premiums] for which horses have started but were unable to finish due to an accident, all uncoffered horses who did not finish shall [will] share equally in such premium or premiums.

(5) If there is a purse [be any premium or premiums] for which horses have started but were unable to finish and the situation is not covered by subsection (4) of this section, the purses [each premium] shall be paid to the winner.

Section 3. Every Heat a Race. The purse shall be distributed as in dash races with nothing set aside for the race winner.

Section 4. Placing System. If the placing system is specified in the conditions, the purses shall be distributed according to the placing of the horses in the summary. In order to share in the purse distribution, each horse must complete the race and compete in each heat to which he is eligible. A horse must win two (2) heats to be declared the race winner and such horse shall stand first in the summary. In deciding the rank of the horses other than the race winner, a horse that has been placed first in one (1) heat shall be ranked better than any other horse making a dead heat for first- or any horse that has been placed second in any number of heats. A horse that has been placed second in one (1) heat shall be ranked better than any other horse that has been placed third in any number of heats, etc. (e.g. a horse finishing 3-6 would be ranked ahead of another horse finishing 4-4.) A horse finishing in a dead heat would be ranked below another horse finishing in the same position and not in a dead heat if there be any premium for which the horse maintained a position. It shall go to the race winner, but the number of purses awarded need not exceed the number of horses that started in the race. Unless otherwise specified in the conditions, the money shall be divided in the following percentages: fifty (50), twenty-five (25), twelve (12), eight (8), and five (5).

Section 5. Two in Three. In a two in three race, a horse must
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win two (3) heats to win the race, and there shall be ten (10) percent extra odds for the race winner. The purse shall be divided and awarded according to the finish in each of the first two (2) or three (3) heats, as the case may be. If the race is unfinished at the end of a third heat, all but the heat winners or horses making a dead heat for first shall be ruled out. The fourth heat, when required, shall be raced for the ten (10) percent extra odds for the winner, if there be any third or fourth premiump. e., for which no horse has maintained a specific place, the premium therefor shall go to the winner of that heat, but the number of premiums distributed need not exceed the number of horses starting in the race. In the first 2-year old race, if there are two (2) heat winners and they have made a dead heat in the third heat, the race shall be declared finished and the horse standing last in the summary shall be awarded the ten (10) percent. If the two (2) heat winners make a dead heat and stand the same in the summary, the ten (10) percent shall be divided equally between them.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L LILLY, Commissioner
WILLIAM STREET, Chairman

APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by September 20, 2006, 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 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

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 rules and procedures regarding the rules regarding how purse money is to be distributed in standardbred races.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order that the Authority effectively control harness racing.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the Kentucky Horse Racing Authority “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...” Additionally, KRS 230.260(3) grants the Authority “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 and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting...” This administrative regulation conforms to that statutory directive.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is vital in order that harness racing in Kentucky be effectively monitored and operate smoothly. This rule encompasses all aspects of standardbred racing.
(2) If this is an amendment to an existing regulation, provide a brief summary of:
(a) How this amendment will change the existing administrative regulation: This amendment seeks to bring the rules of standardbred racing in line with current industry standards. The subject matter of the portions of this regulation that have been deleted are now dealt with elsewhere in the standardbred regulations. The language of the regulation is clarified to conform with KRS Chapter 13A drafting requirements.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order that the standardbred regulations meet current industry standards.
(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to “prescribe necessary and reasonable... regulations... under which horse racing... shall be conducted.” KRS 230.260(3).
(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Authority to more effectively control horse racing by improving and modernizing the rules relating to the vital area of licensing.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all racing associations, licensees, farms, stables, and persons in any way connected to standardbred racing, including the wagering public.
(4) Provide an estimate of how much it will cost to implement this administrative regulation, if new, or by change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action.
(b) Is the administrative regulation or amendment necessary: No.
(c) What are the expected costs, if any, that the administration or amendment will impose: None.
(d) The burden that this administrative regulation or amendment will impose on the state or federal government: None.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No increase in cost.
(b) On a continuing basis: See (a) above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No cost in enforcing and implementing 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 change if it is an amendment: No increase in funding.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not increase any fees.
(9) TIERING: Is tiering applied: No, tiering does not apply to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No.
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: None.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
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(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

811 KAR 1:085. Conduct of racing.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate the conduct of racing.

Section 1. Definitions. (1) "High nerving" means a neurastheny at or above the fetlock, including the volar, palmar, or plantar nerves.

(2) "Low nerving" or "posterior low nerving" means a palmar digital neurastheny.

(3) "Nervous horse" means a horse in which the nerve cells in a foot have been removed or desensitized by surgical, physical, or chemical means.

Section 2. A person shall not:

(1) Refuse to comply with an order or ruling of a member or employee of the Authority, an officer or judge, or a person who serves under them;

(2) Interfere with the performance of the duty of a person specified in subsection (1) of this section;

(3) Section 3. (1) A person shall not commit, force, aid, or encourage another person to commit or engage in acts prohibited by the provisions of the section on association grounds.

(2) A person shall not Threaten, strike, or annoy an owner, trainer, driver or attendant of a horse, or an employee of the association or Authority;

(3) A person shall not Make unwelcome sexual advances toward, or request sexual favors from, or engage in verbal or physical conduct of a sexual nature with an owner, trainer, driver or attendant of a horse, or an employee of the association or Authority;

(4) Use force or intimidation against an owner, trainer, driver or attendant of a horse, or an employee of the association or Authority;

Section 3. (1) A person or association shall not offer any money, benefit, or other inducement to any licensee, employee of the Authority, or officer of a racing association to affect the entries to a race, the running of a race, or the outcome of a race.

(2) An action prohibited by subsection (1) of this section shall be immediately reported to the judges who shall promptly inform the racing association and the Authority.

Section 4. (1) An owner, trainer, or driver of a horse shall not threaten or join with others in threatening not to race, or not to declare in, because of the entry of a certain horse or a particular stable, thereby compelling or attempting to compel the racing [race] secretary to reject an eligible entry.

(2) An action prohibited by subsection (1) of this section shall be immediately reported to the Authority [commission].

(3) As owner, trainer, or driver of a horse who violates the provisions of this section shall be suspended.

Section 5. An owner, agent, or driver who has entered a horse shall not demand of the association [track] a bonus of money or other special award or consideration as a condition for starting the horse.

Section 6. (1) A driver shall not place a wager, or cause a wager to be placed on his behalf, or accept a ticket or winnings from a wager on a race, except:

(a) A race on the horse he is driving; and

(b) Through the owner or trainer of the horse he is driving.

(2) An owner or trainer who places a wager for his driver [harness rider] shall:

(a) Maintain a complete record of the wagers [wagers]; and

(b) Make the record available for examination by the judges upon request.

Section 7. Duty to Report Fraudulent Proposal. A person shall immediately report to the presiding judge the details of an act that constitutes an offer, promise, or request for a bribe or wager intended to affect the outcome of a race.

Section 8. Firearms. Unlawful possession of a firearm on association grounds shall be strictly prohibited. Persons lawfully authorized to possess firearms shall carry it in the open, and a party knowingly aware of a firearm on association grounds is required to report it to the Authority.

Section 9. Financial Responsibility. (1) A licensees' failure to satisfy a final civil judgment rendered against the licensee by a court of law for goods, supplies, services, or fees furnished to the person and used in the course of the licensed occupation, constitutes a failure to meet the financial responsibility requirements of KRS 230.310. Lack of a showing of legal and just cause for not satisfying a final civil judgment shall be considered inconsistent with the best interests of racing and the maintenance of honesty, integrity, and high quality of racing and shall constitute cause for refusal to issue or renew a license, or for suspension of a license.

(2) A licensee who contests in a hearing before the Authority judges, or in a hearing before an Authority hearing officer, a denial, nonrenewal, or suspension of a license, shall not be permitted to collaterally attack the validity of a certified copy of a final civil court judgment introduced into evidence at the hearing.

(3) A licensee who is the subject of a complaint, pursuant to this section, relating to financial responsibility that results from an unsatisfied judgment may, as a condition of the grant, reinstatement, or renewal of the license, be required to pay the costs of any proceeding held before the Authority that results from the judgment. Costs shall include the cost of time spent by the hearing officer and the attorney for the Authority, and any fees and incidental expenses incurred in adjudicating the matter. An imposition of costs pursuant to this section shall be subject to approval by the
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full Authority and shall be limited to $500 per individual case. A licensee shall not be required to pay costs if the evidence at the hearing shows that the licensee did not in fact fail to meet the financial responsibility requirements of KRS 320.310 [A participant who has failed to pay an obligation, defaulted in an obligation, issued draft or checks that have been dishonored or for which payment has been refused, or otherwise has displayed financial irresponsibility reflecting on the sport, shall be denied a license or suspended by the commission].

Section 10. Nerved Horses. (1) A horse that has been nerved shall be:
   (a) Designated "nerved" on its U.S. Trotting Association registration and electronic eligibility certificate, and
   (b) Certified as nerved by a licensed veterinarian.
(2) When a horse is nerved, the owner of the horse at the time it was nerved shall cause the information required by subsection (1) of this section to be entered on the horse's registration and electronic eligibility certificates.
(3) High nerving.
   (a) High nerving shall not be permitted in a horse to be raced.
   (b) An incision of nerves at or above the fetlock shall be evidence that a horse has been high nerved, even if partial or complete healing is present at the front of the coronary band of the foot.
(4) Low nerving.
   (a) Only low nerving by surgery, freezing, or other physical means[,] or the injection of alcohol or snake venom, or other chemical means shall be permitted on an [in] a horse to be raced.
(5) Only the posterior digital nerve and middle branches to the palmar part of the foot may be desensitized.
   (c) Low nerving shall be performed below the fetlock.
   (d) The dorsal branches shall be preserved so the horse has feeling at the coronary band at the front of the foot on both sides of the midline of the foot.
(5) A lack of feeling at the coronary band on the front of the foot will be prima facie evidence that a horse has been nerved in violation of the provisions of this section [administrative regulation].
(6) A trainer or owner shall not be permitted to enter or start a horse that is high nerved.
(7) A low nerved horse shall be permitted to start, if the fact that it has been low nerved is published on the bulletin board in the association's racing office.

Section 11. Spayed Mares. If a mare has been spayed:
(1) It shall be noted on the:
   (a) Registration certificate;
   (b) Electronic eligibility certificate; and
   (c) Program when the mare races; and
(2) The owner shall:
   (a) Notify the United States Trotting Association that the mare has been spayed; and
   (b) Return the mare's papers to the United States Trotting Association for correction.

Section 12. [A violation of an of the provisions of this administrative regulation shall be punishable by a fine, suspension or both, or by expulsion. Section 43.] (1) An owner, trainer, driver, attendant or other person representing a horse which has previously tested positive for equine infectious anemia shall not knowingly cause it to be declared into any race.
(2) An owner, trainer, driver, attendant or other person shall not transfer, or attempt to transfer, the horse without first notifying the prospective purchaser or transferee of the fact that the horse had previously tested positive for equine infectious anemia.

Section 13. Penalties. (1) Any person or association track that violates Section 4, 8, or 10 of this administrative regulation shall have committed a Category 2 violation and shall be subject to the penalties set forth in 811 KAR 1:095. Section 4.(2)
(2) Any person or association that violates Section 3 or 7 of this administrative regulation shall have committed a Category 3 violation and shall be subject to the penalties set forth in 811 KAR 1:095. Section 4.(3)
(3) Any person or association that violates Section 1, 2, 5, 6, 9, 11, or 12 of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095. Section 4.(1)

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 a.m., at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4060 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3959.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation sets out rules regarding the conduct of participants in standardbred racing.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary in order that the Authority effectively control harness racing.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the Kentucky Horse Racing Authority "forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse races and wagering thereon is conducted." Additionally, KRS 230.290(3) grants the Authority "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 and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting." This administrative regulation conforms to that statutory directive.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is vital in order that harness racing in Kentucky be effectively monitored and operate smoothly.
   (2) if this is an amendment to an existing regulation, provide a brief summary of:
   (a) How this amendment will change the existing administrative regulation: This amendment seeks to bring the rules of standardbred racing in line with current industry standards. The principle import of this amendment is to add a prohibition regarding the possession of firearms on association grounds and to address the financial responsibility requirements as contained in KRS 230.310. This amendment reduces the involvement of KHRA in financial responsibility issues unrelated to KHRA activities. Some of these issues were going beyond the ability of the KHRA to resolve (for example, complex bankruptcy issues related to financial responsibility).
   (b) The necessity of the amendment to the administrative
regulation: This amendment is necessary so that the standardbred regulations meet current industry standards.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "prescribe necessary and reasonable... regulations... under which horse racing... shall be conducted." KRS 230.250(6).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Authority to more effectively control horse racing by improving and modernizing the necessary rules relating to misconduct on the part of standardbred racing participants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all racing associations, licensees, farms, stables, and persons in any way connected to standardbred racing, including the wagering public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No compliance actions will be necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Reduced KHRA involvement in financial responsibility issues unrelated to horse racing.

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

(a) Initially: No increase in cost.

(b) On a continuing basis: See (a) above.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No cost in enforcing and implementing this regulation.

(6) 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 funding.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 230.215 and KRS 230.260. These statutes authorize the Authority to promulgate administrative regulations prescribing the (authorizes the promulgation of) conditions of horse racing that shall be conducted in Kentucky.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Difficult to estimate, slightly reduced hearing costs due to reduction in Authority involvement in financial responsibility issues unrelated to bankruptcy.

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

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

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

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

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

Revenues (+/-): Expenditures (+/-): Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority

(AMENDMENT)

811 KAR 1:890. Medication; testing procedures; prohibited practices [Stimulants and drugs].


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.240(2), and 230.260 authorize the Authority to promulgate administrative regulations prescribing the (authorizes the promulgation of) conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the Authority [commission] to promulgate administrative regulations restricting or prohibiting the use of certain drugs or [and] stimulants or other impure acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibility relating to the health and fitness of horses. The function of this administrative regulation is to provide for the testing of horses for stimulants and drugs and the administrative regulation of stimulants and drugs.

Section 1. Definitions. (1) "Administrator" means to apply to or cause the introduction of a substance into the body of a horse.

(2) "Authority laboratory" means a laboratory chosen by the Authority to test saliva, urine, blood, or other samples or specimens from horses taken under the supervision of the Authority veterinarian.

(3) "Location under the jurisdiction of the Authority" or "Association grounds" means a track as defined in KRS 230.210(9).

(4) "Permitted NSAIDs" means the following Permitted Nonsteroidal Anti-Inflammatory Drugs: Phenylbutazone and Flunixin, if administered in compliance with Section 8 of this administrative regulation.

(5) "Positive finding" means the Authority laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administration regulation, was present in the sample. For the drugs, medications, or substances listed in Section 2(5), 6, or 8 of this administrative regulation, a positive finding means a finding in excess of the established concentration level prescribed in this administrative regulation. Positive findings also include:

(a) Substances present in the horse in excess of concentrations at which the substances might occur naturally; and

(b) Substances foreign to a horse at concentrations that cause interference with testing procedures.

(6) "Split sample" means the split sample portion of the saliva, urine, blood, or other sample or specimen taken under the supervision of the Authority veterinarian.

(7) "Split sample laboratory" means the laboratory approved by the Authority to test the split sample portion of the saliva, urine, blood, or other samples or specimens taken from horses under the supervision of the Authority veterinarian.

(8) "Test barn" means a fenced enclosure sufficient in size and
facilities to accommodate the staining of horses temporarily detained for obtaining sample specimens for prerace and postrace testing.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as otherwise provided in this administrative regulation, while participating in a race (betting or nonbetting), qualifying race, time trial, or official workout, a horse shall not carry in its body any drug, medication, substance, or metabolite derivative that:

(a) Is a narcotic;
(b) Could serve as an anesthetic or tranquilizer;
(c) Could stimulate, depress or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or
(d) Might mask or screen the presence of a prohibited drug or prevent or delay testing procedures.

(3) Therapeutic medications in excess of established threshold concentrations shall be prohibited. The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for phenylbutazone and flunixin are set forth in Section 8 of this administrative regulation.

(4) A substance present in a horse in excess of a concentration at which the substance could occur naturally shall be prohibited.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or nonbetting), qualifying race, time trial, or official workout, a drug, medication, substance, or metabolite derivative thereof, prohibited by this section.

(a) A saliva, urine, blood, or other sample or specimen from the horse was taken under the supervision of the Authority veterinarian or a person other than a veterinarian licensed to practice veterinary 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) The only injectables allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide and the one (1) endjectable medication set forth in Section 6 of the administrative regulation.

(3) Except as set forth in subsection (5) of this section, 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.

(4) A veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Authority shall use only one (1) time disposable needles, and shall dispose of them in a container provided by the Authority.

(5) If a person regulated by the Authority has a medical condition which makes it necessary to have a needle and syringe at a location under the jurisdiction of the Authority, the person shall request prior permission from the Judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The Judges may grant approval for a person to possess and use a needle and syringes at a location under the jurisdiction of the Authority, but may establish necessary restrictions and limitations.

(6) 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 4. Certain Permitted Substances. Imares, antigens, antitoxins, antibodies, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited;
(2) The treatment is not injected; and
(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Authority.

Section 5. Anti-Ulcer Medications. The following anti-ulcer medications shall be permitted to be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to the race in which the horse is entered:

(1) Cimetidine (Tagamet): 8-20 mg/kg.
(2) Omeprazole (Gastropip): 2-2.5 grams.
(3) Ranitidine (Zantac): 8 mg/kg.
(4) Sucralfate: 2-4 grams.

Section 6. Furosemide and Adjunct Bleeder Medication Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race (betting or nonbetting), qualifying race, time trial, or official workout.

(2) Only the Authority veterinarian or a licensed veterinarian approved by the Authority may administer furosemide prior to a race (betting or nonbetting), qualifying race, time trial, or official workout. If the furosemide is administered by a licensed veterinarian other than the Authority veterinarian, the administering veterinarian shall provide a written report to the Authority veterinarian.

(3) 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 provided immediately to the Authority veterinarian, judge or Authority employee, if requested, to determine if there has been a violation of this administrative regulation.

(c) The furosemide dosage administered shall not exceed 250 mg.

(d) The specific gravity of postrace urine samples shall not be below 1.010. If the specific gravity of the postrace urine sample is determined to be below 1.010, a second determination 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 eligible to receive furosemide and entered to race, pursuant to Section 7 of this administrative regulation, that does not show a detectable concentration of the drug in the postrace urine, plasma, or serum shall be in violation of this administrative regulation.

(f) The cost of administering furosemide shall be determined by the Authority and shall be prominently posted in the racing office.

(g) The cost of administering furosemide shall be borne by the trainer.

(h) One 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) Aminosaproic acid;
(b) Carbamazepine;
(c) Conjugated estrogens; and
(d) Tranexamic acid.

Section 7. Furosemide Eligibility. (1) A horse shall be eligible to qualify with furosemide if the Authority veterinarian or a licensed veterinarian approved by the Authority determines that it
would be in the horse's best interest to race with furosemide.

(b) Horses eligible for furosemide 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.

(2)(a) A horse determined to be a bleeder by the Authority veterinarian or a licensed veterinarian approved by the Authority shall not be eligible to run for five (5) days after determination for eligibility to receive furosemide has been made.

(b) A horse that has been placed on the furosemide list shall perform in a qualifying race with furosemide and meet the standards of the meeting before being eligible to race.

(c) A horse eligible for furosemide shall receive furosemide unless the licensed veterinarian submits a written request to the Authority veterinarian to no longer administer furosemide to the horse. The request shall be on the form "Certificate of Termination of Use of Furosemide" and shall be submitted to the Authority veterinarian.

(d) A horse that has been determined eligible to receive furosemide shall not have the administration of furosemide terminated until the horse has performed in a qualifying race without the use of furosemide.

(3)(a) After a horse has been determined by the Authority veterinarian to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide for a period of sixty (60) calendar days unless it is determined by the Authority veterinarian that it is detrimental to the welfare of the horse to not be on furosemide. The Authority veterinarian shall complete the form "Declaration of Reinstatement from the Use of Furosemide" and the horse is eligible to receive furosemide again.

(b) A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be eligible to receive furosemide in this jurisdiction.

Section 8. Phenylbutazone and Flunixin. (1) A single oral or intravenous administration of phenylbutazone shall be permitted not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(2) The phenylbutazone dosage administered shall not exceed:

(a) Two (2) grams (g) oral; or

(b) Two (2) grams intravenous.

(3) A post race sample of phenylbutazone reported to exceed a level of five (5) micrograms per milliliter of blood plasma shall be considered a violation of this section.

(4) The oral administration of phenylbutazone may be performed by the trainer.

(5) Phenylbutazone, injected intravenously, shall be administered by the Authority veterinarian or a licensed veterinarian approved by the Authority.

(6) As an alternative to phenylbutazone, a single Intravenous administration of flunixin shall be permitted not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(7) The flunixin dosage administered shall not exceed 500 mg.

(8) A post race sample of flunixin reported to exceed a level of twenty (20) nanograms per milliliter of blood plasma shall be considered a violation of this section.

(9) Flunixin, injected intravenously, shall be administered by the Authority veterinarian or a licensed veterinarian approved by the Authority.

(10) Nonsteroidal anti-inflammatory drugs other than phenylbutazone or flunixin shall be prohibited.

(11) A horse that has been administered phenylbutazone or flunixin may be subject to a stab incision, blood, or other sample or specimen taken under the supervision of the Authority veterinarian to determine the amount of phenylbutazone or flunixin level present in the horse or the presence of other drugs in the horse.

(12) In a horse in which Phenylbutazone has been administered according to Section 8(1), Flunixin is prohibited. In a horse in which Flunixin has been administered according to Section 8(6) of the administrative regulation, Phenylbutazone is prohibited.

Section 9. Test Area. (1) A licensed association shall provide and maintain on association grounds a test area.

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

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

Section 10. Sample Collection, Testing and Reporting. (1) Sample collection shall be done in accordance with the instructions provided by the Authority veterinarian. The Authority veterinarian shall take a sample from a horse that finishes first in a race and a horse designated by the judges to determine if there has been a violation of this administrative regulation.

(2) The Authority veterinarian shall determine a minimum sample requirement for the Authority laboratory which shall be uniform for each horse.

(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.

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

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

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

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

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

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

1. Be supplied by the trainer; and

2. Administered only with the permission and in the presence of the Authority veterinarian.

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

(7) 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 positive finding.

(8) The judge shall schedule a hearing within fourteen (14) calendar days of notification by the Authority to the owner and trainer. The hearing may be continued if the judge determines that a continuance is necessary to effectively resolve the issue.

Section 11. 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 addressed in Section 10 of the administrative regulation, until 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 and chosen 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 after business hours except as specifically provided by paragraph (c) subsection.

(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 malfunction of a split sample freezer or of samples that are not in a frozen condition during storage shall be documented in the log. The Authority shall be considered the owner of a split sample.

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 the split sample laboratory. The party requesting the split sample shall select from a list of laboratories approved by the Authority to perform the analysis.

(b) The request shall be made in writing and delivered to the judge within three (3) business days after the trainer and owner 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 expediently as possible.

(d) The owner or trainer requesting testing of a split sample shall be responsible for the cost of such testing, including the cost of shipping.

(e) Failure of the owner, trainer or a designee to appear at the time and place designated by the Authority veterinarian in connection with the collection of a split sample and shipping the split sample result shall constitute a waiver of any right to be present during split sample testing procedures.

(f) Prior to shipment of the split sample, the Authority shall confirm:

1. That the split sample laboratory has agreed to provide the testing request;
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.

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

Section 12. 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 to be used shall be the "Split Sample Chain of Custody 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 address 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;

(d) A split sample shall be removed from the split sample freezer by an Authority employee after notice to the owner, trainer, or designee, 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.

(e) 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.

(f) 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.

(g) The 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 13. Medical Labeling. (1) A licensee 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.

(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 the 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 14. Trainer Responsibility. (1) A trainer shall be responsible for the condition of horses in his or her care.

(2) A trainer shall possess knowledge of 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 the administrative regulations.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of the administrative regulations regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be 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 postmortem digital rectography (heat noon) is performed on a horse in his or her care and ensuring the 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 other than the jurisdiction of the Authority, to the judges and the Authority veterinarian and ensuring compliance with Section 21 of 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 judges 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 19 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring proper bandages, equipment, and shoes;

(m) Ensuring the horse's presence in the paddock at least one (1) hour before post time or at a time otherwise prescribed before the race in which the horse is entered;

(n) Personally attending in the paddock and supervising the preparation of a horse in his or her care, unless an assistant trainer fulfills such duties or the trainer is excused by the judges.

(o) Attending the call of the horse in the paddock and provide a copy for the owner, trainer, or designee, if requested.

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Section 15. Licensed Veterinarians. (1) A veterinarian licensed by the Authority and practicing at a location under the jurisdiction of the Authority shall be considered under the supervision of the Authority veterinarian and the judges. A veterinarian shall report to the judges or the Authority veterinarian a violation of this administrative regulation by a licensee.

Section 16. Veterinarians' Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the Authority shall submit a KHRA-2 form, "Veterinarian Report of Horses Treated to Be Submitted Daily," 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 pertinent information requested by the Authority veterinarian.

(2) The KHRA-2 form shall be signed by the treating veterinarian.

(3) The KHRA-2 form shall be on file not later than the time prescribed on the next race day by the Authority veterinarian.

(4) The KHRA-2 form shall be 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 judges or the Authority, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of the KHRA-2 form by the veterinarian or his or her designee that is consistent with the analytical results of a positive test reported by the Authority laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 811 KAR 1:095.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication or substance prohibited by the administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 19 of this administrative regulation shall report this fact immediately to the Authority veterinarian or to the judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. Such records shall include:
   (a) The name of the horse;
   (b) The trainer of the horse;
   (c) The date, time, amount and type of medication administered;
   (d) The drug or compound administered;
   (e) The method of administration; and
   (f) The dosage.

The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by Authority personnel.

Section 17. 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 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 or a licensed veterinarian approved by the Authority.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeding list and be ineligible to participate in a race (including postbounding), qualifying race, timed trial, or official workout for the following time periods:
   (a) First incident - fourteen (14) days;
   (b) Second incident within a 365 day period - thirty (30) days;
   (c) Third incident within a 365 day period - 180 days;
   (d) Fourth incident within a 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 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.

(7) A horse shall be removed from the bleeding list only upon the direction of the Authority veterinarian, who shall certify in writing to the judges the recommendation for removal.

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

Section 18. Distribution of Purse, Barn 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 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 considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the laboratory issues a positive finding, the Executive Director of the Authority or the judges shall immediately authorize and execute an examination into the circumstances surrounding the incident that is the subject of the positive finding.

(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 judges shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the Authority laboratory and split sample laboratory, the remaining portion of the samples at the Authority laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the Authority. If a report indicating a positive finding has been issued, the Authority shall use its reasonable best efforts to retain any remaining portion of the sample until legal proceedings have concluded. The Authority may freeze samples.

Section 19. 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 by a licensee, its designee, or any person in an area under the jurisdiction of the Authority:
   (a) The use of which may endanger the health or welfare of the horse;
   (b) The use of which may endanger the safety of the driver;

(2) Without the prior permission of the Authority or its designee, the possession or use of a drug, medication, or substance that has never been approved by the U.S. Food and Drug Administration (FDA) for use in humans or animals at a location under the jurisdiction of the Authority. The Authority shall determine whether to grant prior permission after consultation with the Equine Research Drug Council.

(3) The possession or use of the following blood doping agents at a location under the jurisdiction of the Authority:
   a. Erythropoietin
   b. Dabepoietin
   c. Oxytocin
   d. Hemopure;
   e. Any substance that abnormally enhances the oxygenation of body tissues.

(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 driver;

(5) The use of extracorporeal shock wave therapy or ratal
pulsed wave therapy unless the following conditions are met:
(a) A treated horse shall not race for a minimum of ten (10) days following treatment;
(b) A veterinarian licensed to practice by the Authority shall administer the treatment;
(c) The Authority veterinarian shall be notified prior to the delivery of the device on association grounds;
(d) 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. The form to be used is the "Kentucky Horse Racing Authority Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy."

6. The administration of an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonate or carbon dioxide in a horse within twenty-four (24) hours of a race in which the horse is entered.

7. Without the prior permission of the Authority veterinarian or his or her designee, based on standard veterinary practice for recognized conditions, the use of a nasogastric tube which is longer than six (6) inches for the administration of any substance within twenty-four (24) hours prior to the time of a race in which the horse is entered.

8. A serum total carbon dioxide (TCO2) level that exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, except no violation shall exist if the TCO2 level is found to be normal for the horse following the quarantine procedure set forth in Section 20 of this administrative regulation.

9. Possession or use of a blood gas machine by a person other than an authorized representative of the Authority at a location under the jurisdiction of the Authority.

10. Possession or use of a shock wave therapy machine or radial pulse wave therapy machine by anyone other than a veterinarian licensed by the Authority at a location under the jurisdiction of the Authority.

Section 20. TCO2 Testing and Procedures. (1(a) The presiding judge may order the prerace or postrace collection of blood samples from, and prerace or post race testing of, a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as determined by the presiding judge, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Prerace and postrace testing shall be done at a reasonable time, place, and manner directed by the presiding judge.

(c) A sample consisting of at least two (2) blood tubes shall be taken for a horse to determine the TCO2 concentration in the serum or plasma of the horse. If the Authority laboratory determines that the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the Executive Director of the Authority shall be informed of the positive finding.

(d) If the sample is taken prior to the race and the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the judge shall scratch the horse from the race.

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

(f) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(g) If the level of TCO2 is determined to exceed 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, and the licensed owner or trainer of the horse certifies in writing to the Judges within twenty-four (24) hours after the notification of the test result that the 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 quarded quarantine available for that horse for a period of time to be determined by the Judges but in no event for more than seventy-two (72) hours.

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

(i) During quarantine, the horse shall be re-tested periodically by the Authority veterinarian.

(j) 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.

(k) During quarantine, the horse shall be fed only hay, oats, water, and, subject to the specific approval of the Authority veterinarian, the horse’s usual feed ration and supplements.

(l) If the Authority veterinarian is satisfied that the horse’s level of TCO2, as registered in the original test, is physiologically normal for that horse, the Judges shall permit the horse to race. In such case, the Judges may require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse’s TCO2 level is physiologically normal.

Section 21. Postmortem Examination. (1) The Authority veterinarian may require a postmortem examination by a qualified dissection of the Authority of a horse that dies or is destroyed at a location under the jurisdiction of the Authority.

(2) The Authority or its dissection 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 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 expense.

(4) The presence of a prohibited drug, medication, substance or metabolite derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation. (4) At every meeting where pari-mutuel wagering is permitted, a urine test, or blood test, or both shall be conducted to determine the presence of: (a) Medication; (b) Stimulant; (c) Sodavale; (d) Depressive; (e) Local anesthetics; or (f) Any foreign substance except as provided by Sections 14 and 15 of this administrative regulation.

(5) The tests shall be conducted on the winning horse in every heat and race.

(6) The judge may order a horse in a race to be subjected to a urine test, or blood test, or both.

(5) The tests shall be performed by a laboratory designated by the Authority.

(6) A positive test during a time trial shall be treated as a violation.

(7) The winning time shall be disallowed, and the trainer of record shall be: 1. Fined, or 2. Suspended, or 3. Fined and suspended.

Section 22. (1) When a blood or urine sample is taken by a veterinarian, the owner, trainer or authorized agent shall be present.

(2) A sample shall be:

(a) Delivered in two (2) containers and designated as the "primary" and "secondary" samples.

(b) Immediately sealed, with tamper-proof tape and bear a portion of the multiple-part "identification tag" that has identical printed numbers only.
Section 3. (1) If there is a positive test for the presence of a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by Sections 14 and 15 of the administrative regulation in the post-race test, the laboratory shall immediately notify the presiding judge or commission veterinarian, who shall notify the presiding judge.

(2) If a positive report is received from the laboratory by the presiding judge:
(a) The person held responsible shall be notified; and
(b) A thorough investigation shall be conducted by or on behalf of the judge.

(3) A hearing shall be set by the judge for a hearing to dispose of the matter.

(b) The hearing shall be continued if the judge determines that circumstances justify a continuance.

(4) If the chemical analysis of blood, urine, or other sample of the post-race test taken from a horse indicates the presence of a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by Sections 14 and 15 of the administrative regulation, it shall be considered prima facie evidence that the forbidden substance had been administered to the horse.

Section 4. (1) A horse participating in a race or entered in a race shall not carry in its body any substance as established in Section 1(1) of the administrative regulation, except as provided by Sections 14 and 15 of the administrative regulation.

(2) A substance established in Section 1(1) of the administrative regulation shall not be administered within twenty-four (24) hours prior to the scheduled post time for the first race except furcomido as provided by Section 14 of the administrative regulation to a horse entered to race by:
(a) Injections,
(b) Intravenous administration,
(c) Dose syringe,
(d) Oral administration,
(e) Nasal-gastric tube,
(f) Rectal infusion or suppository,
(g) Inhalation,
(h) Any other means.

The prohibitions in this section include injection or intravenous administration of vitamins, electrolyte solutions, and amino acid solutions.

(4) A person who administers, influences, or conspires with another person to administer to a horse a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by Sections 14 and 15 of the administrative regulation within twenty-four (24) hours of a race in which the horse participates, shall be subject to the penalties provided in Section 16 of the administrative regulation.

Section 5. If the post-race test or tests prescribed in Section 1 of the administrative regulation disclose the presence in a horse of a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by Sections 14 and 15 of the administrative regulation, in any amount, it shall be presumed that the substance was administered by the person having control, care, or custody of the horse.

Section 6. A horse shall not be tubbed in or in the paddock prior to its racing commitment.

Section 7. (1) A trainer shall be responsible at all times for the condition of all horses trained by him.

(2) A trainer shall not start a horse or permit a horse in his custody to be started if he knows, or if by the exercise of reasonable care he might have known or have cause to believe, that the horse has received a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by Sections 14 and 15 of the administrative regulation.

(3) A trainer shall guard or cause to be guarded each horse trained by him in a manner and for a period of time prior to racing the horse necessary to prevent a person not employed by or connected with the owner or trainer from administering a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance.

Section 8. (1) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse shall not refuse to submit the horse to tests:
(a) Required by the provisions of the administrative regulation, or
(b) Ordered by the judge.

(2) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse which refuses to comply with the provisions of this section shall be subject to fine, or suspension, or both, pursuant to Section 16 of this administrative regulation.

Section 9. (1) A horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be placed last in the order of finish.

(2) The winnings of a horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be:
(a) Forfeited; and
(b) Paid over to the track where the infraction occurred for redistribution among the remaining horses in the race entered to them.

(3) A forfeiture and redistribution of winnings shall not affect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, if the distribution of pools is made upon the official placing at the conclusion of the heat or dash.

(a) Advance announcement of program testing by blood-gas analyzer shall not be made.
(b) Announcement for selected races or selected horses shall be made by the judge at the appropriate time and location.

(2) The judge shall make the necessary selections of test subjects at its discretion.

(3) Each horse entered to compete in a race shall be made available upon entering the paddock for the purpose of having a blood sample drawn by an authorized veterinarian.

(4) Failure to report within the prescribed time or refusal by a horseman to present a selected horse under his care, custody, or control for the blood-gas analyzer testing shall result in an automatic scratch of the horse from the racing program, and shall be subject to the penalties provided in Section 16 of this administrative regulation.

(5) After a horse that is in the paddock has had the first blood drawn for the total carbon dioxide test (TCO2), the horse shall not be allowed to leave the paddock for any reason unless permitted by the presiding judge.

2. Removing a horse from the paddock after the first blood has been drawn for the total carbon dioxide test (TCO2) without permission of the presiding judge shall result in an automatic scratch of the horse from the racing program and the trainer shall be subject to the penalties provided in Section 16 of this administrative regulation.

(6) The commission veterinarian or blood-gas technician shall document the name of the trainer or party who failed to report for testing or refused to have blood drawn from the horse, and shall file a report with the judges.
(2) Test documentation.
(a) The commission veterinarian or blood-gas technician shall be responsible for documenting every aspect of the blood-gas analyzer test procedure.
(b) The blood-gas analyzer shall be calibrated by the commission veterinarian or blood-gas technician prior to the test.
(c) The blood-gas analyzer shall be properly maintained and secured during any absence of the commission veterinarian or blood-gas technician.
(d) At the conclusion of testing the commission veterinarian or blood-gas technician shall secure documentation of testing at the commission office.
(e) Sample handling.
(f) The blood samples shall be tested by the commission veterinarian or blood-gas technician and the results of that test shall be recorded by the commission veterinarian or blood-gas technician.

(b) If the testing of a horse shows the total carbon dioxide (TCO2) level at thirty-seven (37) millimoles-per-liter or higher for non-laxus horses, and a total carbon dioxide (TCO2) of thirty-nine (39) millimoles-per-liter or higher for laxus horses:
1. The trainer or licensed designee and the presiding judge shall be notified immediately by the commission veterinarian or blood-gas technician and the horse in question shall be expeditiously retested by the same procedure.
2. The blood-gas analyzer testing shall be observed by the trainer of the horse or his designee, if possible.
The commission veterinarian and a second excessive level of total carbon dioxide (TCO2), as defined by this paragraph shall be deemed a positive test and the judge shall be immediately notified and the horse scratched.
(c) The commission veterinarian or blood-gas technician shall properly identify horse and label each blood tube accordingly prior to taking any blood samples for the blood-gas analyzer test.
(d) Sanitation.
1. The trainer or responsible party shall receive a warning for the first violation of this section.
(b) A ruling shall not be issued for the first violation of the section.
(c) For all subsequent violations, the trainer of the horse shall be subject to the penalties provided in Section 16 of the administrative regulations.

Section 11. Hypodermic Syringe Prohibited. (1) Except for a licensed veterinarian approved by the commission, a person shall not have a hypodermic syringe, hypodermic needle, or other device that can be used for the injection or other infusion into a horse of a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance.
(a) Within the grounds of a licensed harness race track, or
(b) In or upon the premises which he occupies, or has a right to occupy, or
(c) In or on her personal property or effects.
2. A licensed harness racing association upon the grounds of which horses are lodged or kept shall use every reasonable effort to prevent a violation of this section.

Section 12. (1) A veterinarian practicing on the grounds of an extended pari-mutuel meeting shall:
(a) Keep a log of his or her activities on "Veterinary Report Of Horses-Treated", and
(b) Submit a copy of "Veterinary Report Of Horses-Treated" to the commission veterinarian office of the track each day of a race meeting.

(2) The log shall include:
(a) Name of horse;
(b) Name of trainer;
(c) Nature of ailment;
(d) Type of treatment, and
(e) Date and hour of treatment.
(f) The veterinarian shall report to the presiding judge or the commission veterinarian any internal medication given by the veterinarian by injection or orally to a horse after he has been de-
penalties provided in Section 16 of the administrative regulation.

(4) The oral administration of phenylbutazone may be performed by the trainer.

(5) Phenylbutazone, injected intravenously, shall be administered by the commission veterinarian or a licensed veterinarian approved by the commission.

Section 16. The penalty for violation of the provisions of this administrative regulation shall be:

(1) A fine not to exceed $10,000.
(2) Suspension not to exceed one (1) year.
(3) A fine not to exceed $10,000, and a suspension not to exceed one (1) year, or
(4) Expulsion.

Section 22. [Reserved]

Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", (11/06); and
(b) "Declaration to remove a horse from the Administration of Furosemide KHRA 100-1", (8/06); and
(c) "Veterinary Report Of Horses Treated, KHRA 100-2", (8/06); and
(d) "Split Sample Shipment Form 2000, KHRA 100-3", (8/06); and
(e) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy, KHRA 100-4", (8/06); and
(f) "Certificate of Termination of Use KHRA 100-5", (8/06); and
(g) "The Kentucky Horse Racing Authority Withdrawal Guidelines".

[Termination of Use, KRC-1(8/97); and

(a) "Veterinary Report of Horses Treated, KRC-2(8/97)."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Kentucky Horse Racing Authority [Commission]. 4063 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006. Written comments are due 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P.J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1442.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P.J. Cooksey

(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 in standardbred horses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to give the Kentucky Horse Racing Authority ("KHRA" or "Authority") the tools to effectively regulate harness racing. 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 authorized 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 or in the horse participating in a race."

KRS 290.215(2) vests in the Kentucky Horse Racing Authority "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..." Additionally, KRS 230.260(3) grants the Authority "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at the horse race meeting shall be conducted in this state and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting." This administrative regulation conforms to the contents of the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendments will provide an effective and far-reaching rule regarding the administration of drugs and medications to standardbred horses and will, therefore, directly assist in the administration of statutes in Kentucky. This 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 promoting the best possible rule regarding drug administrations. Nothing is more critical to the integrity or safety of racing than the perception and reality that horses are running free of the influence of illegal drugs or medications.

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

(a) How this amendment will change the existing administrative regulation: This amendment largely revamps the current regulation regarding drugs and medications and mirrors in most respects the newly promulgated thoroughbred rule regarding drugs and medications. Under this amendment to the regulation, the only injectable allowed within twenty-four (24) hours of post time is furosemide (not less than four (4) hours prior to post time) and one (1) approved adjunct bleeder medication. A single oral or intravenous administration of phenylbutazone is not allowable within twenty-four (24) hours of the last administration of flunixin shall be permissible, but must be administered more than twenty-four (24) hours prior to post time. The regulation specifies certain 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, the amendment addresses testing procedures and the responsibilities 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: This amendment is necessary to bring the standardbred regulations in conformance with evolving industry standards. This amendment to the regulation will place Kentucky at the forefront of standardbred racing in this country in terms of regulating drugs, medications, and other substances in standardbred horses.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "prescribe necessary and reasonable... regulations... under which horse racing... shall be conducted." KRS 230.240(3). Additionally, KRS 230.240(2) specifically authorizes the Authority 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 or in the horse participating in a race."

(d) How the amendment will assist in the effective administ-
tion of the statute: This amendment will provide an effective, comprehensive and far-reaching rule regarding the administration of drugs and medications to standardbred horses and will, there-
fore, assist in the effective administration of the statute in Ken-
tucky.

(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: This regulation affects all aspects of the stan-
dardbred racing industry. Owners, trainers, drivers, exercise per-
soneel, the betting public and others who work in and around har-
ness race tracks and other licensed facilities in Kentucky will be
affected by this regulation.

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

(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative
regulation or amendment:

Owners-No additional action will need to be taken.

Trainers- Will continue to be responsible for their horses, just
as they were in the past. They will need to make sure they un-
derstand the regulation and operate in compliance with the regula-
tion.

Drivers-No additional action will need to be taken.

Exercise personnel-No additional action will need to be taken.

Betting Public-no additional action will need to be taken.

People who work in and around the harness track-
Veterinarians will need to become familiar with the regulation.

Licensed Facilities-No additional action will need to be taken.

Kentucky Horse Racing Authority-Veterinarians have already
been testing horses for drugs. They will continue testing. Security
has already been monitoring the track for illegal activities. Such
surveillance will continue.

(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3):

Owners-May incur additional costs for testing if split samples
are taken.

Trainers-May incur additional costs for testing if split samples
are taken. This cost will probably be passed on to the owner.

Drivers-Will not incur additional costs

Exercise Personnel-Will not incur additional costs

Betting Public-Will not incur additional costs

People who work in and around the harness track-Will not
incur additional costs

Licensed Facilities-May incur additional costs as a result of
increased testing for medications and increased security. See be-
low.

Kentucky Horse Racing Authority-May need to hire additional
personnel to administer the regulation. There may need to be addi-
tional veterinarian staff, detention barn workers and additional
security personnel. These costs will be born by the licensed facili-
ties pursuant to KRS 230.240.

(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3):

Owners-Owners will have more confidence in the system and
racing will be conducted on a more level playing field.

Trainers-Trainers will be competing on a more level playing
field.

Drivers-Drivers will be competing on a more level playing field
and will be safer on the track.

Exercise Personnel-Exercise personnel will be safer.

Betting Public-Will have more confidence in the industry. The
playing field should be leveled for the betting public.

Licensed Facilities-The integrity of the industry will be im-
proved. If the handle increases because the betting public has
more confidence in the honesty of the racing, this will inure to the
bottom line of the licensed facilities. An increased handle may also
result in increased purses.

Kentucky Horse Racing Authority-The integrity of the industry
will be improved. An increased handle will result in an increase in
tax revenue to the Commonwealth and increased contributions to
certain funds administered by the KHRA.

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

(a) Initially: A similar regulation has already been implemented
in the thoroughbred side of racing. There should not be any in-
creased cost for the initial implementation.

(b) On a continuing basis: See (4)b above.

(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: No
additional cost in enforcing and implementing this regulation ini-
tially. The veterinarians, security personnel, stewards and KHRA
were already enforcing the prior regulation and are enforcing a
similar regulation in the thoroughbred industry. It is possible addi-
tional personnel may be needed. The licensed associations are
responsible for paying these costs pursuant to KRS 230.240. See
(4)b above.

(d) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by change if it is an amendment: Additional costs
may be incurred because the veterinarians will have more duties,
there may be more testing and there may be an increase in secur-
ity as a result of the regulation. The associations are required
pursuant to KRS 230.240 to pay for the reasonable compensation of
veterinarians, security officers and inspectors.

(3) Whether or not this administrative regulation estab-
ilishes any fees or directly or indirectly increases any fees: This
amendment does not increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
serve, or requirements of a state or local government (including
cities, counties, fire departments, or school districts)? No

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

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

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

(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for the first full year?

(b) How much revenue will this administrative regulation gen-
erate for the state or local government agency (including cities,
counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first
year?

(d) How much will it cost to administer this program for subse-
quent years?

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority

(Amendment)

RELATES TO: KRS 230.215, 230.260(1), (3), 230.265(2),
230.290(2), 230.300, 230.320(1) [230.630(1), (3), 230.640,
230.720]

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2),
230.250(3) [230.630(3), (4), (7)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.216(3) and KRS 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.244(3) requires the Authority to promulgate administrative regulations 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. The function of this administrative regulation is to set out the disciplinary powers and duties of the judges and the Authority. [To regulate conditions under which harness racing shall be conducted in Kentucky. The function of the administrative regulation is to provide for fines, suspensions, expulsion and the effect thereof].

Section 1. Section 1. Definitions for this administrative regulation. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, 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 or entity would care for or train a horse, or perform veterinarians services on a horse for the benefits, profit, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the Schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the Schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the Schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the Schedule.

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

(7) "Inactive person" means a trainer or veterinarian who has his or her license suspended or revoked pursuant to this administrative regulation pertaining to:

(a) A violation involving a Class A drug;

(b) A second or third violation involving a Class B drug in which the person’s licensing privileges have been suspended or revoked for six (6) months or longer in the current license year;

(c) A third or subsequent violation of 811 KAR 1:090 for an excessive TCQO2 level; or

(d) A third or subsequent violation of 811 KAR 1:090 involving shock wave or blood gas machines.

(8) "Schedule" means the Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule.

(9) Withdrawal guidelines means the Kentucky Horse Racing Authority Withdrawal Guidelines.

Section 2. General Provisions. (1) An alleged violation of 811 KAR 1:090 shall be adjudicated in accordance with this administrative regulation, and with 811 KAR 1:100, 811 KAR 1:105, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a prerace or postrace sample that is not classified in the Schedule, the Authority may establish a classification after consultation with either or both of the Racing Commissioners International and the Racing and Medication Consortium.

(3) The Judges 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 license 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 days.

(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 racing in the Commonwealth, a trainer whose penalty is for a prior Class A violation or for a prior Class B third offense violation under this administrative regulation has not been fully and finally adjudicated may, if stall space is available, 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 judging requires the trainer’s horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the authority 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 substance to a horse in violation of 811 KAR 1:090, Section 19, or who has encroached in prohibited practices in violation of 811 KAR 1:090, shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing board of veterinary medicine by the judges.

(10) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(11) If a person is charged with committing multiple or successive offenses involving a Class C or Class D drug, medication, or substance, the judge or the Authority may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing such overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the judges or the Authority.

(12) Any person who has had [suspended] or [suspended—until-paid—All persons— who—have] been fined under these rules shall be suspended until [said] fine has been paid in full.

(13) [Section 2. Payment of Fines:] Payment of a fine directly or indirectly by a person other than the person upon whom it is imposed shall be [prohibited] and shall not serve to abate or satisfy any penalty imposed [will be unenforceable to the commission].

(14) [Section 3. Recording and Posting—Penalties:] Written or printed notice thereof shall be made [delivered] to the person penalized, notice shall be posted immediately at the office of the track, and notice shall be forwarded immediately to the office of the Authority, the United States Trotting Association, and the Association of Racing Commissioners International [the commission] by the presiding judge or chief judge of the commission.

(15) [Section 4. Effect of Minor Penalty on Future Engagements:] Where the penalty is for a driving violation and does not exceed in time a period of five (5) days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. Such driver may drive in stake, futurity, early closing and feature races, during a suspension of five (5) days or less, but the suspension shall [will] be extended one (1) day for each date the driver [he] drives in such a race.

(16) A horse shall not [Section 5. Effect of Suspension Penalty—Whenever the penalty of suspension is prescribed in these rules it shall be construed to mean an unconditional exclusion and disqualification from the time of receipt of written notice of suspension from any participation—other directly or indirectly—in the privileges and use of the course and grounds of a track during the progress of a race meeting, unless otherwise specifically limited when such suspension is imposed, such as a suspension from driving. A suspension or expulsion of either a husband or wife shall apply in each instance to both the husband and wife. The suspension becomes effective when notice is given unless otherwise specified. A person may be suspended or expelled under this rule if it is determined that such person’s espousals would be denied upon application, and the commission reserves the right to require each person’s espousals to complete and submit an application in order to make such determination.

Section 6. Effect of Penalty on Horse—No horse shall have the
right to compete while owned or controlled wholly or in part by a person whose license has been suspended or revoked, disqualified, or excluded. An entry made by or for a licensee whose license has been suspended or revoked or for a horse which has been suspended, disqualified, or excluded shall be held liable for the entrance fee thus contracted without the right to compete unless the penalty is removed.

(17) An association shall not willfully allow a person whose license has been suspended or revoked, disqualified, or excluded, or who shall drive or suspended or disqualified horse to make a race and the person shall be fined not less than fifty ($50) dollars nor more than $100 for each offense.

Section 7. Fraudulent Transfer. The fraudulent transfer of a horse by any person or persons under suspension or to whom has been issued a notice of a hearing, a show cause order, or a citation, has been issued, in order to circumvent said suspension, shall constitute a violation.

Section 8. Suspended Person. Any track-willfully allowing a suspended, disqualified, or excluded person to drive in a race, or a suspended or disqualified horse to start in a race or a performance against time, or after notice, shall be held liable for the entrance fee, not exceeding $100, for each offense, or suspension or expulsion.

(18) An association shall not willfully allow [Section 9—Any track-willfully allowing] the use of its track or grounds by a person whose license has been suspended or revoked or a horse which has been suspended.

(19) [An expelled or unconditionally suspended person]—An expelled or unconditionally suspended person, after notice, shall not be allowed to drive his horse in a race, nor exceed the $500 fine for each offense, or suspension or expulsion.

Section 10. Whenever a person is excluded from a pari-mutuel association by the association, the Authority shall be notified.

(20) A person subject to suspension, revocation, or expulsion shall not [track by the track,] the commission shall be notified.

Section 11. An expelled, suspended, disqualified, or excluded person cannot act as an officer of an association. An association [a- track, A track] shall not, after receiving notice of such penalty, employ or retain in its employ an expelled, suspended, disqualified or excluded person at or on the track during the progress of a race meeting.

(21) A license that has been suspended shall serve any suspension imposed:
(a) During the current race meet, if there are any days remaining in the suspension;
(b) During the next regularly scheduled race meet at the operating race track where the infraction took place if there are any days remaining in the suspension;
(c) During the race meet at another operating track in this state where the licensee seeks to engage in the activity for which he or she was suspended if the track where the infraction took place closes before another race meet is held at that track.

(22) Any penalty [Any track found violating this rule shall be fined not to exceed $500-
Section 12. All penalties imposed by the United States Trotting Association or the racing commissions of the various states shall be recognized and enforced by the Authority (enforcement) unless application is made for a hearing before the Authority, during which [commission—within] the applicant must show cause as to why the [such] penalty should not be enforced against him in this state.

Section 3. Prior Offenses. (1) Any prior offense occurring in Kentucky shall be considered, in accordance with the requirements of this section, by the judges and by the Authority in assessing penalties. A prior offense occurring in another racing jurisdiction may be considered by the judges and the Authority in assessing penalties. The judges shall attach to a penalty judgment a copy of the offender's prior record listing violations that were committed both inside and outside of Kentucky.

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

(3) A prior offense involving a Class C or Class D drug may be considered as a prior offense if the act that constituted the offense was committed before the effective date of this administer-

ative regulation and within one (1) year of the offense for which the person stands charged.

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

(5) A prior offense 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 Violations Not Related to Drugs or Medications. (1) A violation classified as a Category 1 violation shall be punishable by a suspension or revocation of licensing privileges from zero to thirty (60) days, in proportion to the seriousness of the violation and the facts of the case. The licenses whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine not to exceed $5,000.

(2) A violation classified as a Category 2 violation shall be punishable by a suspension or revocation of licensing privileges from thirty (30) to sixty (60) days in proportion to the seriousness of the violation and the facts of the case. The license whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine not to exceed $10,000.

(3) A violation classified as a Category 3 violation shall be punishable by a suspension or revocation of licensing privileges from sixty (60) days to an indefinite length of time in proportion to the seriousness of the violation. The license whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine commensurate with the seriousness of the violation.

(4) Any violation of an administrative regulation in 811 KAR Chapter 1 not otherwise specifically delineated or addressed shall be a Category 1 violation and shall be subject to the penalties set forth in subsection (1) of this section.

Section 5. Penalties for Class A, B, C, or D Drugs. (1) Class A drug. A licensee who administers, or is party to or responsible for administering a Class A drug to a horse, in violation of 811 KAR 1-300, shall be subject to the following penalties:
(a) For a first offense:
1. A suspension or revocation of licensing privileges from zero to three (3) years, in proportion to the seriousness of the violation and the facts of the case. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
   a. Payment of a fine of $5,000 to $10,000; or
   b. Forfeiture of purse money won;
(b) For a second offense:
2. A suspension or revocation of licensing privileges from three (3) to five (5) years, in proportion to the seriousness of the violation and the facts of the case. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.
3. The licenses whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
   a. Payment of a fine of $10,000 to $20,000; or
   b. Forfeiture of purse money won;
(c) For a third offense:
3. A suspension or revocation of licensing privileges for not less than five (5) years in proportion to the seriousness of the violation and the facts of the case. A revocation of licensing privileges may be permanent. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.
2. The licensee whose license may be suspended or revoked and the Authority may enter into an agreement mitigate the suspension or revocation by agreeing to any or all of the following actions:
   a. Payment of a fine commensurate with the seriousness of the violation;
   b. Forfeiture of purse money won.
   (a) Suspension of the owner’s horse. A horse administered a Class A drug, in violation of 811 KAR 1:090, 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) - 180 days;
      3. For a third offense - a suspension from 180 - 360 days.
   (b) Class B drug. A licensee who administers, or is a party to or is responsible for administering a Class B drug to a horse in violation of 811 KAR 1:090, shall be subject to the following penalties:
      (a) For a first offense:
         1. A suspension or revocation of licensing privileges from zero to sixty (60) days in proportion to the seriousness of the violation and the facts of the case.
      (b) The license whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $1,000 to $2,500;
         b. Forfeiture of purse money won.
   (c) For a second offense:
      1. A suspension or revocation of licensing privileges from one (1) month to six (6) months as deemed appropriate by the Authority in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $1,000 to $2,500;
         b. Forfeiture of purse money won.
         (d) Suspension of the owner’s horse. A horse administered a Class B drug, in violation of 811 KAR 1:090, shall be subject to suspension from racing in Kentucky as follows:
            1. For a first offense - no suspension;
            2. For a second offense - a suspension from zero - 60 days;
            3. For a third offense - a suspension from sixty (60) - 180 days.
   (3) Class C drug. A licensee who administers, or is a party to or is responsible for administering a Class C drug to a horse, in violation of 811 KAR 1:090, is subject to the following penalty:
      (a) For a first offense:
         1. A suspension or revocation of licensing privileges from zero to ten (10) days in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $250 to $500;
         b. Forfeiture of purse money won.
   (b) For a second offense within a 365-day period:
      1. A suspension or revocation of licensing privileges from ten (10) to thirty (30) days in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose license may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $500 to $1,000;
         b. Forfeiture of purse money won.
   (c) For a third offense within a 365-day period:
      1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose license may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $1,000 or more.
   (4) Class D Drug. A licensee who administers, or is a party to or is responsible for administering a Class D drug to a horse in violation of 811 KAR 1:090, shall be subject to the following penalty:
      1. A suspension or revocation of licensing privileges from three (3) months to one (1) year as deemed appropriate by the Authority in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $250 to $500;
         b. Forfeiture of purse money won.
   (b) For a second offense:
      1. A suspension or revocation of licensing privileges from three (3) to six (6) months in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $500 to $1,000;
         b. Forfeiture of purse money won.
   (c) For a third offense within a 365-day period:
      1. A suspension or revocation of licensing privileges from six (6) months to one (1) year in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose license may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $1,000 or more.
   (d) Class E drug. A licensee who administers, or is a party to or is responsible for administering a Class E drug to a horse in violation of 811 KAR 1:090, shall be subject to the following penalty:
      1. A suspension or revocation of licensing privileges from one (1) year to life as deemed appropriate by the Authority in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $1,000 or more.
   (e) For a second offense within a 365-day period:
      1. A suspension or revocation of licensing privileges from one (1) year to life as deemed appropriate by the Authority in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose license may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $2,500 to $5,000;
         b. Forfeiture of purse money won.
   (f) For a third offense within a 365-day period:
      1. A suspension or revocation of licensing privileges from one (1) year to life as deemed appropriate by the Authority in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose license may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $5,000 or more.
   (g) For a fourth offense within a 365-day period:
      1. A suspension or revocation of licensing privileges from one (1) year to life as deemed appropriate by the Authority in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose license may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $10,000 or more.
   (h) For a fifth offense within a 365-day period:
      1. A suspension or revocation of licensing privileges from one (1) year to life as deemed appropriate by the Authority in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose license may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $20,000 or more.
   (i) For a sixth offense within a 365-day period:
      1. A suspension or revocation of licensing privileges from one (1) year to life as deemed appropriate by the Authority in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose license may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $50,000 or more.
   (j) For a seventh offense within a 365-day period:
      1. A suspension or revocation of licensing privileges from one (1) year to life as deemed appropriate by the Authority in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose license may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $200,000 or more.
   (k) For an eight offense within a 365-day period:
      1. A suspension or revocation of licensing privileges from one (1) year to life as deemed appropriate by the Authority in proportion to the seriousness of the violation and the facts of the case.
      2. The licensee whose license may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:
         a. Payment of a fine of $1,000,000 or more.

gate the suspension or revocation by agreeing to forfeiture of purse money won.

(6) Suspension of the owner's horse. A horse that registers a TC02 level in violation of 811 KAR 1:090 shall be subject to suspension from racing in the Commonwealth of Kentucky as follows:

(a) For a first offense - no suspension;
(b) For a second offense - a suspension from fifteen (15) to sixty (60) days;
(c) For a third offense - a suspension from sixty (60) days to 180 days;
(d) For a fourth offense - a suspension from eight (8) months to one (1) year.

(6) In any instance of a positive prerace TC02 test result, the horse shall be scratched.

Section 7. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes a violation of 811 KAR 1:090, Section 19(3)(a), (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 suspension or revocation of licensing privileges from one (1) to three (3) months in proportion to the seriousness of the violation and the facts of the case.
2. The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of fine of $1,000 to $5,000.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) to six (6) months in proportion to the seriousness of the violation and the facts of the case.
2. The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $5,000 to $10,000.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from six (6) months to one (1) year in proportion to the seriousness of the violation and the facts of the case.
2. The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine commensurate with the seriousness of the violation.

Section 8. 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. This prohibition shall not prevent the partners in a veterinary practice from providing services to horses as long as the inactive person does not receive a pecuniary benefit from those services.

(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;
(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;
(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.

(4) 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:

(a) Not accept any payment directly or indirectly from purse money won through racing of the horse;
(b) Not pay purses or commissions directly or indirectly to the inactive person;
(c) Not accept any commissions directly or indirectly from purses or commissions paid to the inactive person.

Section 9. Other Disciplinary Measures. (1) A person who violates 811 KAR 1:090, Section 6, regarding biosemia and adjusted bleed or medication use on raceday shall be treated as a person who has committed a Class C drug violation.

(2) A person who violates 811 KAR 1:090, Section 8(1), for exceeding the concentration levels allowed for phenylbutazone or furosemide shall be treated the same as a person who has committed a Class C drug violation.

(3) A person who violates 811 KAR 1:090, Section 8(6), for administering a non-steroidal anti-inflammatory drug other than phenylbutazone or furosemide shall be treated the same as a person who has committed a Class C drug violation.

(4) A person who is responsible for more than one oral or intravenous administration of a non-steroidal Anti-Inflammatory Drug (NSAID) within twenty-four (24) hours of post time, in violation of 811 KAR 1:090, Section 8(1), shall be treated the same as a person who has committed a Class A drug violation.

(5) A person who violates 811 KAR 1:090, Section 19(2), shall be treated the same as a person who has committed a Class A drug violation.

(6) A person who violates 811 KAR 1:090, Section 19(3)(a), shall be treated the same as a person who has committed a Class A drug violation.

(7) A person who violates Section 2(15) of this administrative regulation shall be subject to a fine in an amount not to exceed $5,000 and shall forfeit purse money won while in violation of that regulation.

(8) Any association in violation of Section 2(16), (17), or (19) of this administrative regulation shall, together with its officers, be subject to a fine in an amount not to exceed $5,000.

Section 9. Disciplinary Measures by Judges. (1) Upon finding a violator or an attempted violator of Title 811 KAR, the judges may impose one (1) or more of the following penalties:

(a) Declare a horse or a licensee ineligible to race or disqualify a horse or a licensee in a race;
(b) Suspend or revoke a person's licensing privileges for a period of time not more than five (5) years as may be deemed appropriate by the judges in keeping with the seriousness of the violation and the facts of the case;
(c) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the judges to be inconsistent with maintaining the honor and integrity of the sport of horse racing, to be excluded or ejected from association grounds or from a portion of association grounds.

(2) The license whose licensing privileges may be suspended or revoked and the judges may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed $5,000 in proportion to the seriousness of the violation and the facts of the case.

Section 11. Disciplinary Measures by the Authority. (1) Upon finding a violator or an attempted violator of Title 811 KAR, the Authority may impose one (1) or more of the following penalties:
(a) Declare a horse or a licensed person ineligible to race or disqualify a horse or a licensed person in a race;
(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation or
(c) Eject or exclude persons from association grounds for a length of time the Authority deems necessary.

2. The license whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to pay a fine commensurate with the seriousness of the violation and the facts of the case.

(2) Upon appeal of a matter determined by the judges or hearing de novo of a matter determined by the judges, reverse or reverse the judges' rulings unless or in part, except as to findings of fact by the judges' ruling regarding matters that occurred during or incident to the running of a race and as to the extent of disqualification fixed by the judges for a foul in a race.

Section 12 Matrices Incorporated by Reference. (1)(a) "The Kentucky Horse Racing Authority Uniform Drug and Medication Control Schedule (1)(a)" and
(b) "The Kentucky Horse Racing Authority Withdrawal Guidelines for Standardbreds"

(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.

(3) The material may also be obtained from the Kentucky Horse Racing Authority Web site www. khra ky. gov.

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W CLAY, Deputy Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1442.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(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 811, the standardbred regulations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide the Authority guidance on enforcing the statutes and regulations pertaining to the standardbred industry.
(c) How this administrative regulation conforms to the content of the authorizing statutes. KRS 230 240(2) specifically 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 participating in a race."

KRS 230.215(2) vests in the Kentucky Horse Racing Authority "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."

Additionally, KRS 230.260(5) grants the Authority "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 and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting."

KRS 230.320 (1) provides authority for any license granted pursuant to KRS 230 to be revoked or suspended. This administrative regulation conforms to the various statutory directives mentioned.

(d) How this administrative regulation currently assists or will assist in the effective enforcement of the statutes: This administrative regulation is vital to the ability of the KHRA to effectively monitor and enforce statutes and regulations relating to harness racing in Kentucky. If the KHRA's rules and regulations are to have any validity and effectiveness, there must be sanctions in the event of violations and the agency must have the means and ability to enforce and apply those sanctions.

(2) If this is an amendment to an existing regulation, provide a brief summary of:
(a) How this amendment will change the existing administrative regulation: This amendment totally revamps the existing penalty regulation for standardbreds. This amendment establishes a category scheme for classifying violations with Category 1 violation being deemed the least serious, followed by Category 2 and 3 violations - Category 3 being the most egregious. Additionally, a separate penalty scheme is set out for drug and medication violations which completely replaces and revolutionizes the existing penalty scheme.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the Kentucky Horse Racing Authority with the ability to effectively enforce the statutes and regulations pertaining to the standardbred industry.
(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "prescribe necessary and reasonable regulations... under which horse racing shall be conducted."
(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes a workable and effective penalty scheme for enforcing the standardbred regulations and punishing violators.

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

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment.
Owners-No additional action will be needed to be taken.
Drivers-No additional action will need to be taken.
Trainers-No additional action will need to be taken.

(b) Exercise personnel-No additional action will need to be taken.

(c)es-Public-No additional action will need to be taken.
People who work in and around the harness track-No addi-
tional action will need to be taken.

Licensed Facilities-No additional action will need to be taken.

Kentucky Horse Racing Authority-Veterinarians have already been testing horses for drugs. They will continue testing. Security has already been monitoring the track for illegal activities. Such surveillance will continue. Stewards and the Authority have already been hearing objections and inquiries and instituting suspensions and fines for drug violations. This activity will continue.

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

Owners-Additional costs unless there is a violation.

Trainers-No additional costs unless there is a violation.

Drivers-Will not incur additional costs unless there is a violation.

Exercise Personnel-Will not incur additional costs.

Betting Public-Will not incur additional costs.

People who work in and around the harness track-Will not incur additional costs unless there is a violation.

Licensed Facilities-May incur additional costs as a result of increased testing for medications and increased security. See below.

Kentucky Horse Racing Authority-May need to hire additional personnel to administer the KAR 1:000 which relates to this regulation. There may need to be additional veterinarian staff, detention barn workers and additional security personnel. These costs will be born by the licensed facilities pursuant to KRS 230:240.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Owners-Owners will have more confidence in the system and racing will be conducted on more level playing field.

Trainers-Trainers will be competing on a more level playing field.

Drivers-Drivers will be competing on a more level playing field and will be safer on the track.

Exercise Personnel-Exercise personnel will be safer.

Betting Public-Will have more confidence in the industry. The playing field should be leveled for the betting public.

Licensed Facilities-The integrity of the industry will be improved. If the handle increases because the betting public has more confidence in the honesty of the racing, this will inure to the bottom line of the licensed facilities. An increased handle may also result in increased purses.

Kentucky Horse Racing Authority-The integrity of the industry will be improved. An increased handle will result in an increase in tax revenue to the Commonwealth and increased contributions to certain funds administered by the KHRA.

(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 increase in costs associated with the implementation of this amendment.

(b) On a continuing basis. See (a) above.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No cost in enforcing and implementing this amendment to the 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 change if it is an amendment: It is not anticipated that an increase in funding will be necessary.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection

Kentucky Horse Racing Authority (Amendment)

811 KAR 1:100, Protests.

RELATES TO: KRS 230.215, 230.260(1) [230.630(4) - (6), 230.640]

STATUTORY AUTHORITY. KRS 230.215(2), 230.260(3) [230.630(4), (6), (7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate protests and the effect of protests.

Section 1. Protests. Protests shall:

(1) Be made only by:

(a) An owner,

(b) A manager,

(c) A trainer, or

(d) A driver and

(2) Shall be made at any time before distribution of the purse is made;

(3) Shall be made in writing;

(4) Shall be sworn to, and

(5) Shall contain at least one (1) specific charge which, if true, would prevent the attending (may be made only by an owner, manager, trainer or driver of one (1) of the contesting horses, at any time before the winnings are paid over, and shall be reduced to writing, and sworn to, and shall contain at least one (1) specific charge, which, if true, would prevent the horse from winning or competing in the race.

Section 2. The judges shall, in [every] case of protest, demand that the driver and the owner or owners, if present, shall immediately testify under oath. If a person refuses to testify after being ordered to do so and the race has not yet started, that person is; and in case of their refusal to do so, the horse shall not be allowed to start or continue in the race, but shall be ruled out, and any entrance money shall be forfeited [with a forfeit of entrance money].

Section 3. Unless the judges find satisfactory evidence to warrant excusing the horse, they shall allow a horse [him] to start or continue in the race under protest, and if such horse is found to be suitable by the examination of the members of the track commission, if any is won by that horse, shall be retained by the association on behalf...
of [forthwith transmitted to] the Authority [commissioner] to allow the interested parties to continue the [interested-an opportunity to] sustain the allegation of the [protest proceeding].

Section 4. Any person who knowingly, and with intent to influence the results of a race, protests [suspends or suspends] a horse falsely and without cause, [or merely with intent to embarrass the protestant] shall be charged pursuant to Section 9(2) of this administrative regulation [penalized by a fine not to exceed $250 or by suspension or expulsion].

Section 5. Nothing herein contained shall affect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, when such distribution is made upon the official placing at the conclusion of the heat or dash.

Section 6. In case of an appeal or protest, the purses money affected will be deposited with the association [commission in trust fund] pending the decision of the appeal. The review and appeal procedures set forth in 811 KAR 1:106 shall be followed.

Section 7. A [Any] judge who refuses [may be suspended for refusal] to accept a protest shall be in violation of this administrative regulation.

Section 8. A person who has knowledge, prior to a race, of information that would prevent an ineligible horse from running in a race, and who fails to file a protest prior to the race with regard to that horse, shall be charged pursuant to Section 9(2) of this administrative regulation [penalized by a fine not to exceed $250 or by suspension or expulsion].

Section 9. Penalties. (1) Any person or association that violates any provision of this administrative regulation, with the exception of Section 4 of this administrative regulation, shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:105, Section 4(1).

(2) Any person or association that violates Section 4 of this administrative regulation shall have committed a Category 2 violation and shall be subject to the penalties set forth in 811 KAR 1:105, Section 4(2).

Section 10. Material Incorporated by Reference. (1) The Protest Form (KHRHA XXX) is incorporated by reference.

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

(3) This material may also be obtained from the KHRHA Web site at www.khra.ky.gov.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority by writing to Wednesday, September 20, 2006, 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 and 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation governs the manner in which horse racing participants may register complaints against other participants.
(b) The necessity of this administrative regulation: The regulation is necessary to create a structured and consistent process for handling protests.
(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 230.215(2) and 230.250(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation ensures that horse races are governed by a consistent body of rules concerning protests against other participants.

(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 only clarifications to the language of the regulation and serves to bring this administrative regulation into conformity with KRS Chapter 13A drafting requirements. A penalty provision is added to ensure consistency in the adjudication of violations of the horse racing regulations.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.
(c) How the amendment conforms to the content of the authorizing statute: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All participants in horse racing as regulated by the Authority.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new steps are required to comply; the amendment simply clarifies the rules regarding protests at horse races.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear rules are established concerning protests at horse races.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(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
necesary.
(6) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A
(9) TIERING: Is tiering applied? Tiering is not applied, as the regulation applies equally to all participants at horse races.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-): 
Expenditures (+/-): 
Other Explanation:

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

811 KAR 1:105. Review and appeal.

RELATES TO: KRS 230.215, 230.260(1), (3), (7), 230.320, 230.530
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), (6), (7), 230.320(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.320(1) authorizes the Authority to promulgate administrative regulations governing disciplinary procedures. This administrative regulation establishes the requirements for hearings conducted by the racing judges and the Authority, and for appeals from their decisions.

Section 1. Definition. "Judge" means a racing judge.

Section 2. Judges' Hearing. (1) The judges shall have the authority to review any alleged violation of the provisions of KRS Chapter 230 relating to horse racing or 811 KAR Chapter 1.
(2)(a) A person charged with a violation of the provisions of KRS Chapter 230 or 811 KAR Chapter 1 shall be provided with a written notice, either personally or by mail, before a judges' hearing is held concerning the violation, unless the person charged waives the notice requirement in writing. Prior notice shall not, however, be required for any routine driving or racing offense as set forth in 811 KAR 1.075.
(b) The notice shall consist of:
   1. The date, time, and place of the hearing;

   2. A specific designation of the particular statute or administrative regulation alleged to have been violated;
   3. A clear and concise factual statement sufficient to inform each party with reasonable definiteness of the type of acts or practices alleged to be in violation of the statute or administrative regulation;
   4. A statement advising the party of the right to be represented at the hearing by counsel or by a member of any racing trade association; and
   5. A statement advising the party of his or her right to subpoena witnesses and documentary evidence through the Authority.
   (3) A judges' hearing shall be conducted no less than five (5) and no more than thirty (30) days after service of the notice. The judges may grant a continuance of the hearing if all parties agree. The executive director and the chairman of the Authority shall be promptly notified of any continuance of a judges' hearing.
   (4) A judges' hearing shall be closed to the public, and the judges shall cause no public announcement to be made concerning a matter under investigation until the hearing has concluded and the party charged has been notified of the decision.
   (5) The presiding judge shall conduct the hearing to ascertain and determine the substantial rights of the parties involved, and shall not be bound by the technical rules of procedure and evidence.
   (6) The presiding judge and at least one (1) associate judge who was serving as judge at the time of the incident in question shall be present at all times at a judges' hearing.
   (7) Testimony shall be given under oath and a record shall be made of the hearing, either by use of a tape recorder or bv court reporter's transcription. The person charged with the violation may, however, waive the recording and the transcription of the testimony. The judge shall not be required to receive testimony under oath in cases in which their ruling is based solely upon a review of a video tape of a race.
   (8) If, at the conclusion of the hearing, the judges find that a statute or an administrative regulation has been violated, they shall within five (5) days issue a written ruling which sets forth the:
      (a) Full name of the person charged with the violation;
      (b) Identification of the person, if licensed, by license classification and address;
      (c) Statute or administrative regulation number and pertinent parts of the statute or administrative regulation violated;
      (d) Finding by the judges as to the violation of the statute or administrative regulation and
      (e) Penalty assessed by the judges.
   (9) A copy of the ruling shall be delivered to the party charged and to the Authority. A copy of the ruling shall also be posted in the racing secretary's office, and forwarded to the office of the Association of Racing Commissioners International and the United States Trotting Association.
   (10) Appeal and review. A party who is the subject of any order or ruling of the judges may appeal to the Authority for a review of the judges' order or ruling, except for a disqualification for a foul in a race or as to a finding of fact concerning any incident occurring in the running of a race.
   (11) Application for review. An application to the Authority for review of the judges' order or ruling shall be made within five (5) days after a party has received notice of the order orally or in writing and shall:
      (a) Be in writing and addressed to the Authority secretary at the Authority general office;
      (b) Contain the signature of the applicant and the address to which notice may be mailed to the applicant;
      (c) Set forth the ruling requested to be reviewed and the date of the ruling;
      (d) Set forth with particularity, all factual and legal issues which the applicant believes justify review by the Authority of the judges' ruling, with specific citation to all relevant statutory provisions and administrative regulations; and
      (e) Request a hearing.
   (12) The application for appeal may request from the Authority the Form, "Notice of Appeal," KHRFA Form 200-1 (8/96). Completion and filing of this form by the applicant will satisfy the filing requirements of this section.
   (13) A person charged with a violation of the provisions of KRS
Chapter 230 or 811 KAR Chapter 1 may request a waiver of a judges' hearing by making written request to the presiding judge within five (5) days of receipt of a notice of violation. The judges may consent to the waiver if the judges determine that waiver is in the best interest of racing. If the judges consent to the waiver, the judges shall issue a ruling and recommended penalty in accordance with the evidence available to them, and deliver it to the Authority and the person charged. If the judges refuse to grant a waiver, the judges' hearing shall be scheduled and shall proceed pursuant to subsection (3) of this section.

Section 3. Authority Hearing on Appeal from Judges' Hearing. (1) A hearing by the Authority of an appeal from a judges' ruling pursuant to Section 2(10) of this administrative regulation shall be conducted in all respects in accordance with KRS Chapter 13B. (2) A hearing by the Authority on an appeal from a judges' ruling shall be held within sixty (60) days of the filing of the appeal. A continuance of thirty (30) additional days may be granted for good cause shown.

Section 4. Frivolous Appeal. (1) The Authority may determine that an appeal to the Authority from a judges' ruling or an appeal to the Authority by means of waiver of the judges' hearing pursuant to Section 2(12) of this administrative regulation, is a frivolous appeal. An appeal shall be presumed to be frivolous if: (a) The applicant applies for an appeal to the Authority but fails without good cause to appear at the KRS Chapter 13B hearing before the Authority's hearing officer or (b) The applicant appears at the KRS Chapter 13B hearing but fails without good cause to offer evidence at the hearing to support his application for review. (2) If the Authority finds that an appeal is frivolous, this fact shall be considered an aggravating circumstance and may be considered in assessing any penalty pursuant to KAR Chapter 1.

Section 2. (1) If the chairman of the commission, executive director, or the director of standardbred racing has information that any licensee or other person has occurred his license based on false or fraudulent statements or has violated any administrative regulations of the commission or the provisions of the Kentucky Revised Statutes, he shall have the authority to revoke or suspend the license of that licensee or other person, provided, however, that the licensee or other person may have a review of that action by filing a written appeal with the commission not later than ten (10) days after the action is taken. (2) The appeal shall be addressed to the commission at its principal office and shall: (a) Set forth the decision or ruling of the commission or the provisions of the commission or the provisions of the Kentucky Revised Statutes, as the case may be; and (b) Request a specification of charges and review by the commission of the charges upon which the action of the commission is based.

Section 5. Authority Hearing Initiated by the Authority. (1) If the Authority (commission) is of the opinion that any association, licensee, or other person has violated any administrative regulation (regulations) of the Authority (commission) or a provision (the provisions) of the Kentucky Revised Statutes, it shall have the authority to issue a citation against that association, licensee or other person directing him to appear and show cause why his license should not be immediately suspended or revoked or why he should not be expelled from licensed facilities or otherwise penalized in accordance with these administrative regulations [nullify or void in an amount commensurate with the offense]. The citation shall be in the prescribed in KRS Chapter 13B 050 and the show cause hearing shall be conducted in all respects in accordance with KRS Chapter 13B. (2) If the administrative regulation or statute, alleged to have been violated and the time and place where that violation occurred, (3) The acts committed by the offending party on which those violations are based, and (4) A full statement of charges preferred against the offending party.

Section 4. Notice of any commission hearing held under Section 4. (1) Notice of any administrative regulations or in any other instance, shall be drafted and served in accordance with KRS 13B 050. (2) If notice is issued pursuant to: (a) Section 1 of this administrative regulation, the notice shall contain a specification of the charges upon which the ruling or decision of the judges was based, or (b) Section 2 or 3 of this administrative regulation, the notice shall set forth the information required by that section.

Section 6. All hearings shall be conducted in accordance with KRS Chapter 13B.

Section 6. 7. Stay of Enforcement. A stay of enforcement of the imposition of a license or a license shall be governed by KRS 230 3202. (1) A stay of enforcement of the imposition of a license pursuant to KRS 230 3202 by a racing official, the chairman of the commission, or the director of standardbred racing, the licensees may request a stay of the license pending appeal to the commission in accordance with KRS 320 3202. (2) The stay shall be granted effective immediately upon the filing by the licensee of a notice of appeal and request for stay on the Notice of Appeal form provided by the commission; (a) The commission's office; or (b) The office of the Director of Standardbred Racing located at the operating track.

(3) The notice of appeal shall be filed within forty-eight (48) hours after the citation was issued. (4) The commission shall hear the appeal within sixty (60) days of the filing of the appeal and request for stay. (5) If the previous decision is against the official, the chairman of the commission, or the director of standardbred racing is upheld by the commission, the licensee, at the discretion of the commission, shall serve any suspension imposed; (a) During the current racing meet, if there are enough remaining days to serve out the suspension; (b) During the next regularly scheduled racing meet at the operating track where the infraction took place; (c) During a racing meet at another operating track in the state where the licensee seeks to engage in the activity for which he or she is licensed; or (d) Any combination of the provisions of paragraphs (a) through (c) of the subsection.

(6) If a licensee without an appeal or otherwise fails to pursue the appeal once filed, the licensee shall, at the discretion of the commission, serve any suspension imposed; (a) During the current racing meet, if there are enough remaining days to serve out the suspension; (b) During the next regularly scheduled racing meet at the operating track where the infraction took place; (c) During a racing meet at another operating track in the state where the licensee seeks to engage in the activity for which he or she is licensed; or (d) Any combination of the provisions of paragraphs (a)
through (c) of this subsection.

(2) Upon the withdrawal of an appeal, failure to attend a scheduled appeal hearing, or upon hearing an appeal, the commission may:

(a) Increase a penalty of suspension to a penalty of revocation;

(b) Reduce a penalty of revocation to a period of suspension.

Section 8. Witnesses for hearings may be subpoenaed by the chairman, vice-chairman, executive director, director of standardbred racing or hearing officer.

Section 9. All sections of this commission may be appealed to the Franklin Circuit Court in accordance with the provisions of KRS 438.440.

Section 7. [44] Incorporation by Reference. (1) "Notice of Appeal", Form 200-1, (8/06), [KRC-17-(7/03)] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Horse Racing Authority [Commission], 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 9 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Authority Web site www.khra.ky.gov.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner
WILLIAM STREET, Chairman
APPROVED BY AGENCY, August 14, 2006
FILED WITH RIC: August 15, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 a.m., at the South Park Theater at the Visitor Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures for hearings before the judges and the Authority.

(b) The necessity of this administrative regulation: The regulation is necessary to establish a consistent and organized procedure for conducting hearings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority the power to promulgate administrative regulations for the conditions under which horse racing is conducted. KRS 230.260(1) grants the Authority the power to promulgate administrative regulations under which licenses may be denied, revoked, or suspended.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administration of the statute ensures that licensees are governed by a consistent body of rules concerning hearings before the judges and the Authority.

(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 streamlines the hearing process, so that 1 basic set of procedures will govern hearings in both standardbred and thoroughbred hearings. The amendment imposes precise time requirements during which appeals must be taken and hearings held, to avoid long delays in the resolution of cases. The amendment also gives the Authority the power to penalize frivolous appeals which are taken merely to obstruct or delay the penalty process. The amendment also more clearly grants the Authority the power to conduct hearings on its own initiative.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the hearing process and make it run swiftly and efficiently.

(c) How the amendment conforms to the content of the authorizing statutes. By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.320(1) regulating the denial, revocation, or suspension of licenses at hearings.

(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons conducting or participating in horse races are affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No steps for compliance are required; the regulation is merely clarified.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear rules are established concerning the conduct of hearings before the judges and the Authority.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(d) 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 necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not applied as the regulation applies equally to all persons conducting or participating in horse racing meetings.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

811 KAR 1:110. Timing and records.

RELATES TO: KRS 230.215, 230.260(1) [230.630(1) - (9); 230.640]
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3) [230.630(3), (4), (7)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and KRS 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which races [across-track, off-track and in-track] racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate timing of races and records.

Section 1. Timing Races. (1) The time of a [in every race, the time of each] heat shall be [accurately] taken by three (3) timers or one (1) timer on an approved electronic timing device.
(2) The time shall be [in which case three shall be one (1)] time(s) placed in the record in minutes, seconds, and tenths of seconds, and upon completion of each heat, the time [thereafter] shall be publicly announced or posted.
(3) An [unofficial] time shall not be announced or admitted to the record, and when the timers fail to act, [the] time shall not be announced or recorded for that heat.

Section 2. Error in Reported Time. If an [in any case of alleged] error in the recorded time is alleged regarding the time of a horse, [announcement or publication of the time made by a horse,] the time [as] questioned shall not be changed [to favor said horse or owner,] except upon the sworn statement of the judges and timers who officiated [at] the race.

Section 3. Track Measurement Certificate. An association shall file with the Authority a certificate from a duly licensed civil engineer or land surveyor attesting that the track has been measured from wire to wire three (3) feet out from the pole or inside hub rail, and certify in linear feet the result of the measurement. If there is a change or relocation of the hub rail, the track shall be measured and recertified. If changes or relocation of the hub rail have been done since January, 1930, shall forthwith cause to be filed with the commission's certificate of a duly licensed civil engineer or land surveyor that he has subsequently to January, 1930, measured the said track from wire to wire three (3) feet out from the pole or inside hub rail thereof and certifying in linear feet the result of such measurement. Each track shall be measured and recertified in the event of any change or relocation of the hub rail.

Section 4. Time for Lapped on Break. The leading horse shall be timed and his time only shall be announced. A [no] horse shall not obtain a win race record by reason of the disqualification of another horse unless the horse’s actual race time can be determined by photo finish or electronic timing [a horse is declared a winner by reason of the disqualification of a breaking horse on which he was lapped].

Section 5. Time for Dead Heat. In case of a dead heat, the time shall constitute a record for the horses making a dead heat and both shall be considered winners.

Section 6. Timing Procedure. The time shall be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.

Section 7. [Any person who shall be guilty of fraudulent misrepresentation of time or the alteration of the record thereof in any public race shall be fined, suspended, or expelled, and the time declared not a record.]

Section 8. Time Performance. Time performances shall be [are] permitted subject to the following:
(2) An approved electronic timer shall be [is] required for [all] time performances. If there is [in the event of] a failure of a timer during the progress of a time performance, a [the] time trial performance record shall not [will] be obtained.
(3) A time trial performance is [Time-trial performances are] permitted [only] during the course of a regular meeting while [with] the regular officials are in the judges’ stand. Time trial performances may be permitted by the Authority (commission) immediately prior to or following a regular scheduled meeting if [provided a full complement of licensed officials are in the judges’ stand and if] provided a separate application is filed with the Authority (commission) thirty (30) days in advance, listing the officials and the number of days requested.
(4) Time trial performances shall be [are] limited for two (2) year-olds who go to equal or [one] beat 2:10, and [three] three (3) year-olds and older [ever] who go to equal or beat 2:05.
(5) A [in any race or performance against time, executive use of the horse shall be considered a violation.
(6) Any conclave, agent, [or] sale organization or other person who sells or advertises [may be fined or suspended for selling or advertising] a horse with a time trial record without designating it as a time trial shall be considered to be in violation of this administrative regulation.
(7) Time trial performance records shall not be included in the performance lines in a race program.
(8) Time trial performances shall be designated by preceding the time with the number (2) capital Ts.
(9) When a horse performs against time, another horse shall be permitted [shall be proper to allow another horse or horses] to accompany him in the performance but not to precede or be harnessed with or in any way attached to the performing horse [horses].
(10) [A] A break during a time trial shall be considered [as] a losing effort and a losing performance shall not constitute a record.

Section 8. Penalties. (1) Any person or track that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095. Section 4(1), except that a person or track that fraudulently misrepresents time or alter time in any race shall have committed a Category 2 violation and shall be subject to the penalties set forth in 811 KAR 1:095. Section 4(2).

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
Wednesday, September 27, 2006, at 11:00 am, 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 the Kentucky
Horse Racing Authority in writing by Wednesday, September 20,
2006, five working days prior to the hearing, of their intent to at-
tend. 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 pro-
posed administrative regulation. Written comments shall be ac-
cepted until Monday, October 2, 2006. Please send written notifi-
cation of intent to be heard at the public hearing or written com-
mments on the proposed administrative regulation to the contact
person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing
Authority, Environmental and Public Protection Cabinet, 100 Air-
port Road, Suite 300, Frankfort, Kentucky 40601, phone (502)
564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation
establishes the procedures for timing horse races.
(b) The necessity of this administrative regulation: The regula-
tion is necessary because it establishes a consistent and organized procedure
for timing horse races.
(c) How this administrative regulation conforms to the content
of the authorizing statutes. KRS 230.215(2) and 230.260(3) grant
the authority power to promulgate administrative regulations gov-
erning the conditions under which horse racing is conducted.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: The adminis-
tration regulation ensures that horse races are governed by a
consistent body of rules concerning procedures for timing.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment makes only clarifications to the lan-
guage of the regulation and serves to bring this administrative regulation into conformity with KRS Chapter 13A drafting require-
ments.
(b) The necessity of the amendment to the administrative regulation: The amendment is necessary to ensure that the lan-
guage used in the administrative regulation is precise and clear.
(c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this adminis-
terative regulation, the amendment enhances the statutory goal of
KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
(d) How the amendment will assist in the effective administra-
tion of the statutes: Same as (2)(c) above
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
terative regulation: All persons conducting or participating in horse
races are affected.
(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this adminis-
terative regulation, if now, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in
question (3) will have to take to comply with this administrative regulation or amendment: No steps for compliance are required, the
regulation is merely clarified.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): No cost.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): Clear rules are established con-
cerning the postponements of race meetings.
(5) Provide an estimate of how much it will cost the administra-
tive body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the imple-
mentation 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 regula-
tion, if now, or by the change if it is an amendment: No increase
necessary.
(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: N/A
(9) TIERING: Is tiering applied? Tiering is not applied as the
regulation applies equally to all persons conducting or participating in
horse racing meetings.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
project, or requirement of a state or local government (including
cluding cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government
(including cities, counties, fire departments, or school districts) will
be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the
expenditures and revenues of a state or local government agency
(including cities, counties, fire departments, or school districts) for
the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for subsequent years?
(c) How much will the cost to administer this program for the first
year?
(d) How much will it cost to administer this program for subse-
quent years?
Note: If specific dollar estimates cannot be determined, provide
a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

811 KAR 1:130. Security; persons permitted on licensed
premises.

RELATES TO: KRS 230.215, 230.260(1) [230.650(1), (3),
230.640, 230.690(6)]

STATUTORY AUTHORITY: KRS 230.215(2),
230.260(3) [230.650(3), (4), (5),
NECESSITY, FUNCTION, AND CONFORMITY: KRS
230.215(3) and 230.260(3) authorize the Authority to promulgate
administrative regulations prescribing the conditions under which
horse races shall be conducted in Kentucky. The function of this administrative regulation is to regulate persons permitted on licensed
premises.

Section 1. (1) A [Each] licensee of the Authority shall immedi-
ately report to association security personnel the presence of any
person not authorized by this administrative regulation to be on all
or any portion of association grounds [as defined herein shall
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2. A [each] licensee shall take all necessary [such] measures [as] to maintain the security of horses on association [the association] grounds and [so as] to protect horses from injury due to mistreatment, fright, [tugging-at] or tampering [with said horses].

3. Other than postpersons, a licensee shall exclude from the paddock area, race-clip and aparturant portions where necessary all persons who have no immediate connection with the horses entered except members of the Authority [commission], racing officials, officials and directors of the United States Trotting Association and Standardbred Canada, and duly accredited members of the news media persons not employed by, or not the invited guests of, the racing association or the owner or trainer of a horse scheduled to run that day shall be excluded from the paddock area, race-clip and aparturant portions of the track.

Section 2. Admission to Premises. A current [each-and-every] badge or button[]-regardless-of-when issued[ ;] by the Authority, or a current [commission-and-the] badge or button issued by the [National Association of State] Racing Commissions International shall be honored for admission to any location [place] on association grounds [the-track] operating under the jurisdiction of the Authority [commission].

Section 3. Badges and buttons issued to deputy-commissioners (supervisors-of-racing), their assistants and security personnel shall be surrendered to the commission upon termination of employment.

Section 4. Limited Admission. (1) Other than members, officers, and employees of the Authority, racing officials, and police officers, persons not possessing and displaying a properly-issued badge or identification card shall not be permitted to enter any part of the licensed premises except the clubhouse, grandstand, or other areas open to patrons; nor the garages, stables, and exercise yards where the horses, equipment, and employees of the commission, racing officials, and police officers shall be permitted to enter any part of the licensed premises, except the clubhouse, grandstand, or other areas open to patrons, or the general public, unless he possesses and displays a badge or an identification card, countersigned by the chairman of the commission, the designated representative of the commission or track manager to enter the particular area.

(2) Only the following [listed] persons shall be entitled to enter the stable area of a licensee:
(a) Members, officers, and employees of the Authority [commission];
(b) Members and employees of the association performing duties within the stable area [management and employees of management performing duties therein]; and
(c) Racing officials, police officers, owners, trainers, grooms, and others performing official duties in the stable area.

Section 4. Penalties. A [§] Any person or association that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1-095, Section 4(1). In addition, a person who violates a provision of this administrative regulation [violates the rule] may be evicted from the licensed premises by the licensee and thereafter denied admission as a patron or otherwise to any portion of the licensed premises.

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation governs the admission of licensed and unlicensed persons to various areas of a horse racing track.
(b) The necessity of this administrative regulation: The regulation is necessary to limit access of the general public to public areas of the track, and to require that access to the paddock area be limited to licensed or approved personnel.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority the power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation ensures that horse racing activities are conducted in a safe and secure 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: The amendment makes only minor clarifications to the language of the regulation and serves primarily to bring this administrative regulation into conformity with KRS Chapter 13A drafting requirements. A penalty provision is added to ensure consistency in the adjudication of violations of the horse racing regulations.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.
(c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees of the Authority and all members of the general public who visit horse racing tracks will be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons engaged in horse racing operations will need to be licensed by the Authority to enter restricted areas; members of the general public will simply be required to remain in those areas of the track open to the general public.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-
tion (3): Licensees are required to pay a yearly license fee; there is no cost to the general public.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Horse racing will be conducted in a safe and organized manner.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A

(9) TIERING: Is tiering applied? Tierng is not applied as the regulation applies equally to all persons at a horse racing track.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

811 KAR 1:35. Identification cards and badges.

RELATES TO: KRS 230.215(1), 230.260(1) [230.630(1), (9), 230.640]

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3) [230.620(3), (4), (7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse [to regulate conditions under which horses] racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate identification cards and badges.

Section 1. Cards and Badges: (1) A [the] licensee shall issue identification cards or badges only to its officers, employees, guards, and watchmen, to drivers, and to owners, or trainers, their employees, assistants, grooms, and attendants.

(2) A licensee shall have the right to recall identification cards or badges upon reasonable cause.

(3) Identification cards or badges shall be collected [such identification cards or badges may at any time be taken-up by the licensee upon reasonable cause and shall be taken up] from owners, trainers, their employees, assistants, grooms, and attendants when the horses of such owners or trainers are removed from the licensed premises.

(4) [2]—The licensee shall issue temporary identification permits only to persons of good moral character who have a legitimate purpose for entering any such enclosure not open to the general public. Such temporary permits may be taken up by the licensee at any time and shall be surrendered to the licensee when the particular purpose for which the permit was issued has been completed.

(5) An identification card or badge shall be issued to those authorized to enter [entitled to] the stable area by the licensee or as authorized by the chairman of the Authority [commission], to designated representatives of the Authority [commission] and the association [track] management. The identification card or badge, when properly worn or displayed, shall authorize persons [permit them] to guard the area to grant entry to those so properly identified.

(6) An identification card or badge shall not be transferable.

(7) Any person who uses or allows the use of an identification card or badge not issued, or who makes any false report to a law enforcement agency or to the Kentucky Horse Racing Authority [Commission] by saying he or she is a duly authorized agent, shall be guilty of a crime for the first offense.

(8) [in the event said identification card or badge does not permit entry to the specific track, or if worn on a track other than that specified], it shall be subject to immediate forfeiture.

(9) Any identification card or badge [button] may be declared forfeit by [taken up by direction of the Executive Director [Chairman] of the Authority [Commission] or the designated representative of the Authority or the selected [track] upon reason- able cause and shall be collected [taken up] from owners, trainers, their employees, assistants, grooms and attendants when the horses of such owners or trainers are removed from the licensed premises.

Section 2. Enforcement and Eviction. (1) The director of security as designated by the Authority shall have the primary responsibility of enforcing this administrative regulation.

(2) A person who violates this administrative regulation shall be subject to eviction from premises licensed by the Authority and thereafter denied admission as a patron or participant at facilities licensed by the Authority.

Section 3. Penalties. A person who violates this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:35, Section 1(4).

(6) If a person not at-horse authorized is found to be in violation of these provisions, said person may be evicted immediately from the licensed premises by the direction of the chairman of the commission or the designated representative of the commission and thereafter denied admission as a patron or otherwise to any portion of any premises licensed by said commission.

(7) Any person violating such rules may be evicted from the licensed premises by the chairman of the commission or the designated representative of the commission and thereafter denied admission as a patron or otherwise to any portion of the licensed premises.

(8) The director of security as designated by the commission...
shall have the primary obligation of enforcing all-security administrative regulations and, where the same have been violated, he shall notify such violation to the commission, and the same shall be reviewed by a hearing at its regular meeting and, if found upon a full hearing, the commission shall find that the security of the licensees was responsible for such violation, the licensee shall be fined a sum not to exceed the sum of $500.

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner

John W. Clay, Deputy Secretary
APPROVED BY AGENCY, August 14, 2006

FILED WITH JRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey
Draft

Provide a brief summary of:
(a) What this administrative regulation does: This regulation governs the use of identification cards and badges at horse racing tracks.
(b) The necessity of this administrative regulation: The regulation is necessary to limit admission of the general public to public areas of the track, and to require that access to the paddock and other areas be limited to licensed or approved personnel.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority the power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administration regulation ensures that horse racing activities are conducted in a safe and secure manner.
(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 makes only minor clarifications to the language of the regulation and serves primarily to bring this administrative regulation into conformity with KRS Chapter 13A drafting requirements. A penalty provision is added to ensure consistency in the adjudication of violations of the horse racing regulations.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.
(c) How the amendment conforms to the content of the authorizing statute: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees of the Authority and all members of the general public who visit horse racing tracks will be affected.
(f) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action needed, as associations already routinely issue identification cards and badges to association personnel, so that admission to restricted areas of the track can be controlled.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? No cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Horse racing will be conducted in a safe and organized manner.
(d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: (a) Initially: No cost.
(b) On a continuing basis: No cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No/NA.
(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 necessary.
(e) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.
(f) TIERING: Is tiering applied? Tiering is not applied as the regulation applies equally to all persons issued ID cards and badges at a horse racing track.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year?
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-): Expenditures (+/-): Other Explanation:

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

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811 KAR 1:140. Post time; entry number.

RELATES TO: KRS 230.215, 230.260(1) [230.630(1), (2), 230.640]
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3) [230.630(3), (4), (9)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse [to regulate conditions under which horses] racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate post times and horse numbering.

Section 1. Post Time. (1) If racing in-the-event-that-racing pursuant to the hours prescribed by the license for the meeting is conducted at night or twilight, the racing program shall [must] be completed no later than 12 midnight.

(2) Post time for the first race of the evening may be fixed by the licensee. A delay in the first post of not more than ten (10) minutes from the [such] established post time may be taken without prior approval of the Authority.

Section 2. Section 2. Head Number and Saddle Pad. Each competing horse shall be equipped with numbers of style, type and design approved by the commission or its representatives. Numbers shall be so arranged that coupled entries may be distinguished as such and also horses coupled in the field as such.

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 a.m., at the South Park Theatre at the Visiter’s Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey, Kentucky Horse Racing Authority

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation prohibits the horse racing after midnight, and allows 10 minute delays in the first post time without prior approval of the Authority.
(b) The necessity of this administrative regulation: The regulation is necessary to limit prescribe standards for the hours of horse racing.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority the power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administration regulation ensures that horse racing activities are conducted in a safe and timely 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: The amendment makes only minor clarification to the language of the regulation and serves primarily to bring the administrative regulation into conformity with KRS Chapter 13A drafting requirements. The amendment removes a provision concerning horse numbering and saddle pads, which subjects are covered elsewhere.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.
(c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees of the Authority and all members of the general public who visit horse racing tracks will be affected marginally by the timing provisions.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action required.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Horse racing will be conducted in a safe and timely manner.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initial: No cost.
(b) On a continuing basis: No cost.
(5) 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 necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A
(9) TIERING: Is tiering applied? Tiering is not applied as the regulation applies equally to all persons conducting horse racing meetings.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation:
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local governing agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
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(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

- Revenues (+/-):
- Expenditures (+/-):

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

811 KAR 1:145. Number of races per program.

RELATES TO: KRS 230.215, 230.220(1) [230.630(4), (5), 230.640]

STATUTORY AUTHORITY: KRS 230.215(2), 230.220(3) [230.630(4), (5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.220(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate the number of races authorized for each program.

Section 1. (1) Unless approved by the Authority, no licensee shall hold or run more than a total of fifteen (15) races in any one (1) program [off in any one (1) program more than a total of ten (10) races].

(2)(a) If eight (8) races are programmed, four (4) completed races shall constitute a complete program.

(b) If nine (9) races are programmed, five (5) completed races shall constitute a complete program.

(c) If ten (10) race or more are programmed, six (6) completed races shall constitute a complete program.

Section 2. Penalties. Any licensee that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:055, Section 4(1).

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, five working days prior to the hearing, of their intent to attend.

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 Monday, October 2, 2006. Please send written notification of intent to hear at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of

(a) What this administrative regulation does. This regulation establishes the number of races in a program, and the number of races that constitute a completed program if all of the planned races are not actually run.

(b) The necessity of this administrative regulation: The regulation is necessary establish how many races constitute a completed program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.220(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation ensures that horse races are governed by a consistent body of rules concerning programs of races.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes only clarifications to the language of the regulation and serves to bring this administrative regulation into conformity with KRS Chapter 13A drafting requirements. It also increases the number of races allowed in one program from ten to fifteen. A penalty provision is added to ensure consistency in the adjudication of violations of the horse racing regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.

(c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. All licensees of the Authority and all members of the general public who visit horse racing tracks will be affected.

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

(a) How much will each of the regulated entities identified in question (3) have to take to comply with this administrative regulation or amendment? Associations will not have to take any steps to comply; the amendment simply clarifies the rules regarding completed races in a program.

(b) In complying with this administrative regulation or amendment, how much will each of the entities identified in question (3) cost to comply?

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Clear rules are established concerning the completion of races in a program.

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

(1) Initially: No cost.

(2) On a continuing basis: No cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase necessary.
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WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC. August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 16, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7769, fax (502) 564-3959.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation establishes the procedures for postponements in horse racing.
   (b) The necessity of this administrative regulation: The regulation is necessary establish a consistent and organized procedure for postponing horse races.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation ensures that horse races are governed by a consistent body of rules concerning postponements.
   (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 only clarifications to the language of the regulation and serves to bring this administrative regulation in conformity with KRS Chapter 13A drafting requirements.
   (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.
   (c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
   (d) How the amendment will assist in the effective administration of the statutes: Same as (2)(a) above.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons conducting or participating in horse races are affected.
   (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
      (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative...
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regulation or amendment: No steps for compliance are required; the regulation is merely clarified.

(b) In complying with this administrative regulation or amendment, how much will: (c) As a result of compliance, what benefits will accrue to the (d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(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 necessary.

(b) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation:

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years?

4. Other Explanation.

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

811 KAR 1:160. Association with undesirables prohibited.

RELATES TO: KRS 230.215, 230.250(1) [230.630(1), (2), 230.640]
STATUTORY AUTHORITY: KRS 230.215(2), 230.250(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and KRS 230.260(2) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. The function of this administrative regulation is to prohibit the association with undesirable persons, require the reporting of unauthorized conduct and to prohibit unlawful practices.

Section 1. (1) An [No] owner, driver, trainer, groom, attendant or [any] other person having charge of or access to a [any] harness race horse shall not [at any time] associate with, consort with, or in any manner communicate with a [any] known gambler, bookmaker, tout, or person of similar pursuits either on or off the track. An owner, driver, trainer, groom, attendant or other person having charge of or access to a harness race horse shall be presumed to have knowledge of the reputation or notoriety of persons with whom they have communications [if the reputation of such gambler, bookmaker, tout or person of similar pursuit is notorious, the owner, driver, trainer, groom, attendant or other persons having charge of or access to any harness race horse shall be presumed to have knowledge of the facts].

(2) If a [any] person under the jurisdiction or control of the Authority (commission) shall be approached with an [any] offer or promise of a bribe, or with a request or a suggestion for a bribe or [for] any other improper, corrupt or fraudulent act or practice that could affect the outcome of a race [in relation to a race or racing], or a request or suggestion that any race shall be conducted otherwise than fairly in accordance with the law [rule of this commission], it shall be the duty of that [such] person to report immediately the [such] matter to the Authority (commission) or to one of its appointed representatives.

Section 2. Penalties. A person or association that violates a provision of this administrative regulation shall have committed a Category 3 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(3).

(3) Any person found to have violated any provision of the preceding subsections of this rule shall be subject to suspension for a period of not less than thirty (30) days to a lifetime suspension.

(4) If any person shall be guilty of or shall conspire with any other person to commit or for the purpose of committing any corrupt or fraudulent practice in relation to racing in the state, such person or persons shall be suspended and his case referred to the commission. The commission shall make the final disposition of the case or cases.

WILLIAM STREET, Chairman
CHRISTOPHER L. HILL, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Air- port Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2006

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation prohibits association with corrupt persons intent on influencing the outcome of horse races.
(b) The necessity of this administrative regulation: The regulation is necessary to prohibit improper and criminal attempts to influence the outcome of horse races.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation ensures that horse races are governed by a consistent body of rules concerning improper influences upon races.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment makes only clarifications to the language of the regulation and serves to bring this administrative regulation into conformity with KRS Chapter 13A drafting requirements. A penalty provision is added to ensure consistency in the adjudication of violations of the horse racing regulations.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.
(c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons having access to harness racing horses are affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) What the costs and benefits to the entities identified in question (3) will be:
(b) What new rules and regulations will be necessary to comply with this administrative regulation or amendment: No new steps are required to comply; the amendment simply clarifies the rules regarding corrupt influences upon horse races.
(b) By complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear rules are established concerning prohibiting improper attempts to influence the outcome of races.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not applied as the regulation applies equally to all persons with access to harness racing horses.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first full year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years?

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

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

811 KAR 1:175. Tack Inspection.

RELATES TO: KRS 230.215, 230.260(2) [230.530(4), (5), 230.640]

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)
[230.530(4), (5), (7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. The function of this administrative regulation is to provide for inspections within the track grounds.

Section 1. The Authority [commission] or its designated representative shall have the right to permit an authorized [a person or persons authorized by either of them] to enter in or upon the stables, rooms, or other places within the track enclosure whereby [at which] a race meeting is held, or to enter in or upon other tracks or places where horses eligible to race at a race meeting are kept [who are eligible to race at said race meeting] for the purpose of inspecting and examining [and to inspect and examine] the personal effects[,] or property [within such places] of every trainer, stable foreman, groom, authorized agent, and veterinarian [or any of them].

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of Intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7769, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation grants the Authority the power to conduct cork inspections.
   (b) The necessity of this administrative regulation: The regulation is necessary to allow the Authority to ensure that horse racing is conducted in a safe and legal manner.
   (c) How this administrative regulation conforms to the content of the authorizing statutes. KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administration regulation ensures that horse races are governed by a consistent body of rules concerning cork inspections
(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 only clarifications to the language of the regulation and serves to bring this existing administrative regulation into conformity with KRS Chapter 13A drafting requirements.
   (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.
   (c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
   (d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.
   (e) The number and type of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons conducting or participating in horse races are affected.
   (f) Provide an analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, if now, or by the change, if it is an amendment, including:
      (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No steps for compliance are required; the regulation is merely clarified.
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.
      (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear rules are established concerning the postponement of race meetings.
   (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
      (a) Initially: No cost.
      (b) On a continuing basis: No cost.

VOLUME 33, NUMBER 3 – SEPTEMBER 1, 2008

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement of state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
   (c) How much will it cost to administer this program for the first year?
   (d) How much will it cost to administer this program for subsequent years?

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

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

811 KAR 1:195. Track deductions from wagers.

RELATES TO: KRS 230.215, 230.750

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate the deductions authorized by the association [track] from pari-mutuel wagering.

Section 1. Definition. "Take" means [track] "take" the money deducted by the operators of a harness racing association [track] from the gross amount wagered through a pari-mutuel system.

Section 2. (1) [This] "Take", including the tax levied in KRS 138.510, shall not exceed eighteen (18) percent of the gross amount handled on straight wagering pools and twenty-five (25) percent of the gross amount handled on multiple wagering pools.

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner

- 983 -
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

(a) This administrative regulation does. This regulation establishes the percentage of the handle that may be deducted by an association from the gross wagering in a pari-mutuel system, i.e., the "take.

(b) The necessity of this administrative regulation: The regulation is necessary to establish the maximum permissible take.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation ensures that horse races are governed by a consistent body of rules concerning procedures for postponement.

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

(f) How the amendment will change the existing administrative regulation: The amendment makes only clarifications to the language of the regulation and serves to bring this administrative regulation into conformity with KRS Chapter 13A drafting requirements. It also makes explicit that the "breakage," or small change amount left over from using round numbers in betting, shall be retained by the association.

(g) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.

(h) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.

(i) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.

(j) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons conducting or participating in horse racing are affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: No steps for compliance are required; the regulation is merely clarified.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear rules are established concerning the postponements of race meetings.

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

(1) Initially: No cost.

(2) On a continuing basis: No cost.

(3) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A.

(4) 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 necessary.

(5) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(6) TIERING: Is tiering applied? Tiering is not applied as the regulation applies equally to all persons conducting or participating in horse racing meetings.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky, KRS 230.770(1)
establishes the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund. KRS 230.770(5) and (6) authorize the Authority to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions. (1) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sires Stakes Program.

(2) "Kentucky Sires Stakes" means the series of races held annually in Kentucky for two and three-year-old fillies and colts, both trotting and pacing, sired by standardbred stallions standing within Kentucky at the time of conception and funded by the Kentucky Standardbred Development Fund.

(3) "Kentucky Standardbred Development Fund" means the trust and revolvin fund as set out in KRS 230.770.

(4) "KSDF" means the Kentucky Standardbred Development Fund.

Section 2. (1)(a) An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him quality for the Kentucky Standardbred Development Fund shall register the stallion by July (February) 1 of the breeding season with the Kentucky Horse Racing Authority.

(b) Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in Kentucky for the remainder of the calendar year following the breeding season.

(2) A registered stallion that has never sired a foal may be:

(a) be registered in any breeding season prior to his first breeding season;

(b) stand in the Commonwealth of Kentucky as the remainder of the calendar year following the breeding season, unless he is contracted to stand at stud in the southern hemisphere.

(3) A stallion shall be registered on the Standardbred Stallion Certificate, KHRRA 200-2 (8/06) ["Application for Standardbred Stallion Certificate for Eligibility"].

(4) A stallion that satisfies the provisions of this section shall be considered a "registered and resident stallion" for purposes of this administrative regulation.

Section 3. Initial Registration Fees. (1) The following initial registration fees shall be paid:

(a) The sire registration fee for a stallion with an annual book of twenty-five (25) or more mares shall be one (1) full advertised stud fee.

(b) The sire registration fee for a stallion with an annual book of twenty-four (24) mares or less shall be twenty (20) percent of the advertised stud fee or a minimum of $200; and

(c) The registration fee for a stallion standing at Private Treaty shall be the average stud fee charged for the breeding season.

(2) The annual stallion registration fee shall follow the gait of the stallion.

(3) Stallion fees shall be due on or before October 1 of the year nominated to the KSDF.

(4) If a stallion was nominated to the KSDF, the stallion fee shall be paid on or before the October 1 deadline regardless of whether mares are bred to the nominated stallion.

(5) At the end of a breeding season, the owner or lessee of a stallion standing at Private Treaty shall submit to the Authority a list of mares bred and prices charged.

Section 4. Registration Renewal Fees. (1) The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

(2) The "Standardbred Stallion Certification of Eligibility Renewal" form shall be filed by July (February) 1 of the breeding season.

(3) The annual renewal fee for registration of stallions to the Kentucky Standardbred Development Fund shall be:

(a) One (1) full advertised stud fee for a stallion with an annual book of twenty-five (25) or more mares; and

(b) Twenty (20) percent of the stud fee or a minimum of $200 for a stallion with an annual book of twenty-four (24) or less mares.

(4) The annual stallion renewal fee shall follow the gait of the stallion.

(5) Stallion fees shall be due on or before October 1 of the year the renewal form is filed.

(6) If a stallion was nominated to the KSDF, the renewal fee shall be paid on or before the October 1 deadline regardless of whether mares were bred to the nominated stallion.

Section 5. An owner, lessee, stallion manager or syndicate manager of a stallion that is registered with the Authority shall, by October 1 of each calendar year, submit the stallion registration fee, as set forth in Sections 3 and 4 of this administrative regulation, and a report of each stallion, listing the mares bred by each stallion during the preceding twelve (12) months.

Section 6. (1) In order to qualify for the Kentucky Sires Stakes, a foal shall be the product of the mating of a mare with a Kentucky registered and resident stallion.

(a) Foals, other than the first, born to a mare (donor or recipient) in each calendar year produced by any method, including embryo/overy transplant (ET), shall not be eligible for racing in Kentucky.

(b) This rule shall not apply to natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare.

(3) Any future offspring of foals ineligible for racing under this rule shall not be eligible for racing in Kentucky.

Section 7. (1) If an owner, lessee, stallion manager or syndicate manager of a registered stallion fails to furnish information the Authority has requested relating to the registration or renewal of registration of a stallion, the authority shall:

(a) Suspend or deny the registration of the stallion; and

(b) Schedule a hearing, pursuant to 810 KAR 1:029.

(2) After the hearing, the Authority shall determine whether the failure to furnish information was willful and shall do one (1) or more of the following:

(a) Suspend the registration;

(b) Rescind the suspension of the registration;

(c) Deny or revoke the registration;

(d) For the owner, lessee, stallion manager or syndicate manager who failed to furnish the requested information from further registering stallions to the KSDF.

Section 8. (1) If the Authority determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion form contains false or misleading information, the Authority shall:

(a) Suspend or deny the registration of the stallion; and

(b) Summon the person who executed the application, and any person who has knowledge relating to the application, to appear before the Authority at a hearing pursuant to 811 KAR 1:015.

(2) After the hearing, the authority shall determine whether the person knew or had reason to know that the information was false or misleading, and shall do one (1) or more of the following:

(a) Rescind its suspension or denial of the registration;

(b) Suspend, deny, or revoke the registration; or

(c) Bar the owner, lessee, stallion manager or syndicate manager who executed the application containing false or misleading information from further registering stallions to the KSDF.

(3) If a person summoned by the Authority fails to respond to the summons, the Authority:

(a) Shall suspend or deny the registration of the stallion;

(b) Shall notify the person in writing of the action taken by the Authority;

(c) May bar the owner, lessee, stallion manager or syndicate manager who executed the application containing false or misleading information from further registering stallions to the KSDF Program.

Section 9. An owner, lessee, stallion manager or syndicate
manager of a stallion eligible for the Kentucky Standardbred Development Fund shall be responsible for:
(1) The registrations and records of the farm; and
(2) Complying with the requirements of the Kentucky Standardbred Development Fund.

Section 10. (1) An owner, lessee, stallion manager or syndicate manager of a stallion used for breeding purposes to produce horses eligible for racing in Kentucky may only issue one (1) mating certificate required to register the first born foal produced by a mare in each calendar year, except for natural birth twins produced from the same pregnancy and foaled by the natural, nonrecipient mare.
(2) If it has been determined that an owner, lessee, stallion manager or syndicate manager of the stallion has issued a mating certificate for a foal other than the first born to a mare (donor or recipient), all foals produced by the mare (donor or recipient) in the applicable calendar year shall be ineligible for racing in Kentucky.

Section 11. The Standardbred Authorized Agent Form, KHRA 300-3 [*Authorized Agent form] shall be filed with the stallion registration.

Section 12. Kentucky Sires Stakes races in which any part of the purse is provided by the Kentucky Standardbred Development Fund shall be subject to administrative regulations promulgated by the Authority.

Section 13. A participant in the Kentucky Sires Stakes race shall:
(1) Be the product of the mating of a mare with a Kentucky registered and resident stallion; and
(2) Maintain eligibility for the Kentucky Standardbred Development Fund.

Section 14. Each race shall be a one (1) mile dash.

Section 15. Post positions for the final and all preliminary legs shall be an open draw with two (2) "also eligibles* drawn for the final race.

Section 16. Eligibility for the Final. (1) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final.
(2) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements set forth in subsection (1) of this section and toward determining tiebreaker status as set forth in subsection (5)(b) of this section.
(3) A horse that has been scratched from an event that is raced shall not be credited toward meeting the starting requirements set forth in subsection (1) of this section.
(4) A horse, in order to start in the final, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.
(5)(a) If the number of horses eligible and declared into any final event exceeds the maximum number specified by the Kentucky Standardbred Development Fund or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final.
  1. 1st place – fifty (50) points;
  2. 2nd place – twenty-five (25) points;
  3. 3rd place – twelve (12) points;
  4. 4th place – eight (8) points;
  5. 5th place – five (5) points; and
  6. 6th place and all other starters – one (1) point.
(6) A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.
(7) If there is a tie among horses after the awarding of points pursuant to subsection (5) of this section, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.
(c) If a horse that is qualified for the final is not declared, the horse with the next highest point total, pursuant to subsection (5) of this section, that is declared shall be eligible for the final.
(6) Also eligible.
(a) The two (2) horses accumulating the highest point total, pursuant to subsection (5) of this section, that are declared into the final, but do not qualify for the final, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".
(b) A horse that is scratched in the final shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.
(i) If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.
(ii) If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.
(iii) A horse shall not be moved into the final as a replacement after the official scratch time deadline that is in effect at the host track.

Section 17. The judges "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

Section 18. All starters shall be subject to the detention policy of the racetrack.

Section 19. (1) There shall not be more than:
(a) Ten (10) starters in each final race on a mile track; and
(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.
(2) All horses shall be on the gate for the final race.

Section 20. (1) For each horse declared to race, there shall be a declaration fee of $1,000. If a preliminary leg splits into two or more divisions, the declaration fee shall be $500 per division. For each horse declared to race in the final, there shall be a declaration fee of $2,000, two (2) percent of the added money (rounded up to the nearest multiple of $100) for each division of each preliminary leg and one (1) percent of the added money (rounded up to the nearest multiple of $100) for the final.
(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.
(3) Purses for the Kentucky Standardbred Development Fund shall consist of:
(a) Nominating fees;
(b) Sustaining fees;
(c) Stallion fees; and
(d) Added money from the Commonwealth of Kentucky.
(4)(a) Distribution of revenue for Kentucky Sires Stakes races shall be reviewed and addressed annually, not later than August 15 of each calendar year, by an advisory panel consisting of at least one (1) representative from each of the following:
  1. The Kentucky Horse Racing Authority;
  2. The Kentucky Harness Horseman's Association;
  3. The host racetrack;
  4. The Kentucky Standardbred Breeders Association and any other recognized standardbred breeding association organized in Kentucky; and
  5. The owner of a stallion registered to the Kentucky Standardbred Development Fund.
(b) The final determination regarding distribution of revenue shall be made by the Kentucky Horse Racing Authority.

Section 21. (1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.
(2) Preliminary legs shall be split into divisions as follows:
(a) One (1) mile track:
  1. Twelve (12) horses or less entered - one (1) division race.
2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.
3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.
4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.
5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.
6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.
7. If the need exists for seven (7) or more divisions eliminations, eligibility to the final shall be determined in a manner consistent with the published conditions.
   (b) One-half (1/2) and five-eighths (5/8) mile track:
1. Nine (9) to ten (10) horses entered - one (1) division.
2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.
3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.
4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.
5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.
6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.
7. If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 22. (1) Gait shall be specified by the owner of the horse, by the first two (2) year old payment.
(2) Change of gait:
(a) May be made at the time of declaration at the track; and
(b) Sustaining payments shall remain in the funds of the original gait specified.
(3) A horse shall not race on both gaits in the same year.

Section 23. A race shall be raced in separate divisions as follows:
(1) Colt/gelding/ridgegelding divisions; and
(2) Filly divisions.

Section 24. (1) The purses awarded for all races shall be distributed on the following percentages:
(a) 50-25-12-8-5: five (5) starters or more;
(b) 50-25-15-10: four (4) starters;
(c) 60-30-10: three (3) starters;
(d) 65-35: two (2) starters; and
(e) 100: one (1) starter.
(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

Section 25. (1) If circumstances prevent the racing of an event, and the race is not drawn, all funds that have been allocated to the division in each of the preliminary legs or the final shall be refunded and pro-rated to the owners of the horses eligible at the time of cancellation.
(2) The eligible horses shall include only horses that made the payments required by Section 31 of this administrative regulation.
(3) The added moneys provided by the Commonwealth of Kentucky for use in the Kentucky Standardbred Development Fund shall be disbursed by August 15 of the each calendar year in accordance with the formula created by the panel as set out in Section 20(4) of this administrative regulation.

Section 26. Starters shall declare in at each track on or before the time specified and advertised by the association conducting the event.

Section 27. (1) Any horse declared into Kentucky Sires Stakes races shall:
(a) Show at least one (1) charted race line with no breaks within thirty (30) days prior to the day of the race; and
(b) Have satisfied the following time requirements:
1. On a track larger than five-eighths (5/8) of a mile;
   a. A two (2) year old trotter shall have been timed in 2:08 or faster;
   b. A two (2) year old pacer shall have been timed in 2:06 or faster;
   c. A three (3) year old trotter shall have been timed in 2:04 or faster;
   d. A three (3) year old pacer shall have been timed in 2:02 or faster.
2. On a five-eighths (5/8) mile track:
   a. A two (2) year old trotter shall have been timed in 2:09 or faster;
   b. A two (2) year-old pacer shall have been timed in 2:07 or faster;
   c. A three (3) year-old trotter shall have been timed in 2:05 or faster;
   d. A three (3) year-old pacer shall have been timed in 2:03 or faster.
3. On a one-half (1/2) mile track:
   a. A two (2) year-old trotter shall have been timed in 2:10 or faster;
   b. A two (2) year-old pacer shall have been timed in 2:08 or faster;
   c. A three (3) year-old trotter shall have been timed in 2:06 or faster;
   d. A three (3) year-old pacer shall have been timed in 2:04 or faster.
(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.
(3) The requirements of this section shall apply both to wagering and nonwagering races.

Section 28 (1) At a scheduled meeting of the Authority, the Authority:
(a) Shall establish the distribution of funds for stakes races for the upcoming year; and
(b) Shall authorize expenditures at a time it designates.
(2) The racing dates for KSDF stakes shall be issued after the track has established its race dates.

Section 29. The Kentucky Standardbred Development Fund shall provide a trophy for each event which will be paid out of KSDF funds.

Section 30. (1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining declaration payments for that year. The Kentucky Sires Stakes Nomination Form, KIRA 300-1 shall be filed with the Authority along with the filing fee.
(2) The two (2) year-old March 15 payment shall be made in order to remain eligible to the KSDF as a three (3) year old.

Section 31. Nomination and sustaining payments shall be made to the Kentucky Standardbred Development Fund in U.S. funds.

Section 32. (1) Yearlings shall be nominated by May 15 of their yearling year.
(2) The nomination fee shall be forty (40) dollars per yearling.
(3) A nomination shall be accompanied by a photocopy of the United States Trotting Association or Standardbred Canada registration certificate.
(4)(a) If the May 15 deadline to nominate a yearling is missed, a late supplemental payment of $500 shall be required.
(b) The late supplemental payment shall be accepted if:
   1. It is received by March 15 of the two (2) year old year;
   2. The two (2) year old March 15th payment is also made.
(5) Sustaining payments shall be as follows:

<table>
<thead>
<tr>
<th>Month</th>
<th>Amount</th>
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<tr>
<td>March</td>
<td>$300</td>
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<td>April</td>
<td>$300</td>
</tr>
<tr>
<td>May</td>
<td>$300</td>
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</tbody>
</table>

March 15 payment shall be mandatory to make entry eligible as a three (3) year old.
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(b) THREE (3) YEAR OLD PAYMENTS

February 15  $300
March 15  $300
April 15  $300

Section 33. The Authority, during any given year, may provide for separate early closing events for both two (2) and three (3) year old standardbreds that are Kentucky sired.

Section 34. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Kentucky Sire Stakes Nomination Form, KHRA 300-1", (2/06) [Application for Standardbred Stallion Certificate for Eligibility, 5-697];
(b) "Standardbred Stallion Certificate, KHRA 300-2", (8/06) ["Standardbred Stallion Certificate of Eligibility-Renewal", 5-697]; and
(c) "Standardbred Authorization Agent Form, KHRA 300-3", (2/06) ["Authorized Agent Form", 6-97].

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

(3) This material may be obtained from the KHRA Web site at www.khs.ky.gov.

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11:00 am, 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006. At least 10 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1442.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes the Kentucky Sires Stakes program.
(b) The necessity of this administrative regulation: The regulation is necessary establish a consistent and organized procedure for Kentucky sires stakes program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: The administration regulation ensures that the Kentucky Sires Stakes program operates according to a standardized body of rules.
(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 conforms the regulation language to HB 453 passed during the 2006 regular legislative session. HB 453 eliminated the requirement that a standardbred stallion that has never sired a foal shall stand in Kentucky for the remaining of the calendar year following the breeding season to qualify for the Kentucky Standardbred Development Fund. This amendment to the regulation also allows the Authority in its discretion to establish early closing events for 2 and 3 year old standardbreds that are Kentucky sired.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to eliminate the requirement described in (2)(a).
(c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky. It also conforms the regulation to HB 453 as described in (2)(a) above.
(d) How the amendment will assist in the effective administration of the statute: Same as (2)(c) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons attempting to qualify for the Kentucky Sires Stakes program are affected because their stallions no longer have to remain in Kentucky after the breeding season to qualify for the program.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if now, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No steps for compliance are required; the eligibility requirements are relaxed.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear rules are established concerning the how to qualify for the Kentucky Sires Stakes program.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A
(9) TIERING: Is tiering applied? Tiering is not applied as the regulation applies equally to all persons attempting to qualify for the Kentucky Sires Stakes program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
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(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

811 KAR 1:220. Harness racing at county fairs.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(1) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.260(3) vests the commission with authority over all horse race meetings in the Commonwealth. This administrative regulation establishes conditions, races, purses and payments in races conducted at fairs in which funds for purses are provided by the Authority, Kentucky Racing Commission and regulates eligibility for participation in harness racing at county fairs.

Section 1. Definition. [Definitions.] "Persons domiciled in Kentucky" means [these] persons who [that] have their true, fixed, and permanent home in Kentucky and to which they have an intention of returning whenever they are absent and[,] those corporations wholly owned by a person domiciled in Kentucky. Factors which indicate domicile and intent include:

(1) The amount of time spent in Kentucky each year [by-the person-in-question] as compared to the amount of time spent [by him] elsewhere;
(2) Whether [or-not] the person or corporation [in-question] owns real estate in Kentucky;
(3) Whether [or-not] the person [in-question] is registered to vote in Kentucky, or whether the corporation [in-question] was organized under Kentucky law;
(4) The "permanent residence" of the person [in-question] as indicated by the records of the Authority, Kentucky Racing Commission and the United States Trotting Association; and
(5) Whether [or-not] the person [in-question] has a Kentucky automobile driver's license.

Section 2. [Fair-Committee.] (1) The Authority [Kentucky Racing Commission] shall determine all questions of domicile.
(2) The Authority [Kentucky Racing Commission] shall weigh the factors set forth in Sections 1 and 3 of this administrative regulation in determining questions of domicile.

Section 3. Eligibility. A horse is eligible to participate in a state race at a county fair if it is [The following horses are eligible to participate in state races at county fairs]:
(1) Either:
(a) A two (2) or three (3) year old that is [Two (2) and three (3)-year olds that are] sired by a stallion that was registered with the Kentucky Standards Development Fund at the time of conception;
(b) A two (2) or three (3) year old whose dam was wholly owned by a person [who wholly owns the dam] [Both at the time of nomination and at the time of the event].
(3) Two (2) and three (3)-year olds whose dams were wholly owned by a person domiciled in Kentucky at the time of conception;
(4) An owner;
(4) Owner of owners]; of the participating horse is [shall be] a current member of the Kentucky Colt Racing Association, Inc., and
(5) An owner [owner of owners]; of the participating horse is [shall be] hold a current license with the Authority [Kentucky Racing Commission].
(6) The [trainer and driver of the participating horse shall hold a current license with the Authority [Kentucky Racing Commission].

Section 4. (1) A [Each] fair shall have a safe and adequate track and the [with] entire track, including start and finish lines, shall be visible to judges and spectators.
(2) The track shall be inspected and approved by a representative of the Authority [Kentucky Racing Commission].

Section 5. A [each] fair shall have safe and adequate stalls for participating horses.
(2) If permanent stalls are not available, either on or off the fairgrounds, tents or other tie-in type stalls may be used.
(3) A [each] county fair shall have stabling stall rent for horses racing at the county fairs with the exception of state-owned property.

Section 7. (1) The Kentucky Colt Racing Association [standardbred] county fair shall be as follows:
(a) [an] A nomination fee of [fifty (50) dollars per horse due before February 15;]
(b) [50] A sustaining fee of $200 per horse due before April 15;
(c) [a] A starting fee of fifty (50) dollars per horse, per fair; and
(d) [a] A twenty-five (25) dollar fee per horse for starting in an overnight race.
(3) A horse eligible for the fair finals shall pay a $200 payment due at time of entry.

Section 8. Officially appointed at county fairs, (1) The Kentucky Colt Racing Association shall submit to the Authority, at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees. At county fair, there shall be at least one (1) on-duty judge approved by the Authority in the judge's stand. In addition, at a meeting in which races are entered, the association member shall provide both the licensed attorney and licensed clerk of the course.
(3) A [Fair] [All-fairs] shall use licensed United States Trotting Association judges to preside over the racing
(4) [The] The judges shall review the ownership of any [each] horse that is entered in order to ensure [in inquire] that it is eligible to race.
(5) [The] The judges may determine the validity for racing purposes of any lease, transfer, or agreement [at-leases, transfers, and agreements] pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.
(6) [The] The judges may declare a horse ineligible to race if [any-horse] the ownership or control of the horse [which is] in question.

Section 9. A [Fair] [All-fairs] shall use a licensed starter with adequate equipment.

Section 10. (1) The entry fees established in Section 5 of this administrative regulation shall be collected by a [each] fair and used
(a) To pay [for-paying] racing officials;
(b) [To provide purses for overnight racing events; and]
(c) [To promote fair racing as otherwise needed].
(2) A [Each] fair shall, upon request, make a full accounting of the entry fees to the Authority [Kentucky Racing Commission].

Section 11. A [Each] fair shall apply to the Authority [Kentucky Racing Commission] for a license to race and for approval of funds by December 15 of the year prior to the racing year. At the time of application, the request for pen-mutual wagering shall be included.

Section 12. A [Each] fair shall have [reserve] the right to change the order of its program and to postpone or cancel any event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, all entry fees shall be refunded.

Section 13. An [Each] early closing event, and all divisions of that event [thereof], shall race a single heat at a distance of one (1) mile and shall be contested for a purse determined by the Authority [Kentucky Racing Commission] annually.

Section 14. There shall be no more than nine (9) starters in any race. If a race is divided into divisions the purse shall be divided so that each division races for an equal portion thereof. The purse shall be divided as follows:
1. Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;
2. Four (4) starters - fifty (50) percent, twenty-five (25) percent, fifteen (15) percent, and ten (10) percent;
3. Three (3) starters - fifty (50) percent, thirty (30) percent, and fifteen (15) percent;
4. Two (2) starters - sixty-five (65) percent and thirty-five (35) percent; and
5. One (1) starter - 100 percent.

Section 15. (1) Points shall be awarded in an [each] early closing race, and any division of an early closing race [thereof], as follows:
(a) [44] First place finisher - fifty (50) points;
(b) [22] Second place finisher - twenty-five (25) points;
(c) [23] Third place finisher - twelve (12) points;
(d) [41] Fourth place finisher - eight (8) points;
(e) [51] Fifth place finisher - five (5) points; and
(f) [61] Each starter that finishes out of the money - one (1) point.

(2) If [in-the-event] two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for that [said] position and one-half (1/2) the points awarded for the next lower position. The same procedure shall be used for the allocation of points in the event of a dead-heat of three (3) or more horses.

(3) [99] Horses that are declared in and then are the subject of a [ante] judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision shall be final.

(4) A [60] Any horse that starts in a Kentucky Sires Stake race within three (3) days of a scheduled county fair race of the same class shall be awarded a fair start and one (1) point.

(5) If [in-the-event] there is a tie among two (2) or more horses with the same number of points, the tie shall be resolved in favor of the horse with the higher earnings in the closing fair events in which the horses have competed.

Section 16. A [No] horse shall not be entitled to compete in more than one (1) race at any fair.

Section 17. In order for a horse, for whom the nomination fee has been paid, to remain eligible [to maintain eligibility] to race at a county fair [the county fair] after there has been a transfer of ownership [the payment of the nomination fee], the following payments are required [for a horse to remain eligible when there is a transfer of ownership]:
1. $300 the first time ownership is transferred from the owner at the time of nomination; and
2. An additional $500 (each-time) thereafter if [when] the same horse is transferred.

Section 18. (1) [At-each-fair] The winning horse at a fair [in-every] race and any other horse the judges deem necessary may [shall] be subjected to a drug test as set forth in 811 KAR 1:090.

(2) A [Each] fair shall provide two (2) enclosed stalls and bedding to be used by the state veterinarian for drug testing.
(3) The stalls required by this section [the (2) stalls] shall be located as close to the race track as possible.
(4) The [two] [these] stalls shall be positioned so as to allow [have the accessibility to] the track announcer to be heard.

Section 19. A current negative Coggins test shall be required for each horse [on all horses] racing at a [each] fair.

Section 20. A [All-driver] shall wear full colors, [with] white pants, and an approved helmet when on the track less than one (1) hour before the start of any [each] fair racing program.

Section 21. A [Each] fair shall provide a trophy or blanket to the winner of a [each] race. [If [Where] a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.

Section 22. An [Each] early closing race shall be contested regardless of the number of entries. However, a [each] fair may [shall have the right to] cancel any [any] overnight race with less than five (5) entries.

Section 23. The deadline for entries at a [each] fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year [10 a.m. (local time)] on the third day before its first-dollar racing program, omitting Saturdays, Sundays, and holidays.

Section 24. A [Each] county fair race holding races for purses [where purses are raced for] shall provide a printed program available to the public containing [with] the following information for:
1. Non-par-mutuel tracks:
(a) Horse's name and sex;
(b) Color and age of horse;
(c) Sire and dam of horse;
(d) Owner's name and address;
(e) Driver's name;
(f) Trainer's name; and,
(g) Summary of starts in purse races, earnings, and the best time for the current and preceding year. A horse's best win time may be earned in either a purse or non-purse race.
2. Pan-mutuel tracks:
(a) Horse's name and sex;
(b) Color and age of horse;
(c) Sire and dam of horse;
(d) Owner's name;
(e) Driver's name and colors;
(f) Trainer's name;
(g) Summary of starts in purse races, earnings, and the best time for the current and preceding year. A horse's best win time may be earned in either a purse or non-purse race.

(h) At least the last six (6) performances and accurate chart lines, an accurate chart line shall include:
1. Date of race;
2. Location of race;
3. Size of track if other than a one-half (1/2) mile track;
4. Symbol for free-legged pacers;
5. Track condition;
6. Type of race;
7. Distance;
8. The fractional times of the leading horse including race times;
9. Post position;
10. Position of the one-quarter (1/4), the one-half (1/2), and the three-quarters (3/4);
11. Stretch with lengths behind leader;
12. Finish with lengths behind leader;
13. Individual time of the horse;
14. Closing dollar odds;
15. Name of the driver;
16. Names of the horses that placed first, second, and third by the judges; and
17. The standard symbols for breaks [brakes] and park-outs shall be used where applicable.
   (i) Indicate drivers racing with a provisional license.
   (i) Indicate pacers that are racing without hobbies.

Section 25. Payments. [All] Nomination and sustaining payments shall (are to) be made to the Kentucky Colt Racing Association. [Commission. All] Entry fees shall (are to) be paid to the fair for which the entry is taken.

Section 28. A person or association that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:05. Section 4(1).

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: August 14, 2006
Filed 9/9/06, effective 9/15, 2006 at 5 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by September 20, 2006, 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 received by the Authority prior to the hearing. You may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, October 2nd, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey, Kentucky Horse Racing Authority
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation establishes the rules for harness racing at county fairs.
   (b) The necessity of this administrative regulation: The regulation is necessary to establish a consistent and organized set of rules for conducting harness race meetings at county fairs.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation ensures that horse races at county fairs are conducted properly and overseen by the Authority.
   (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 primarily clarifies the language in the regulation to conform with KRS Chapter 13A drafting standards. The amendment in Section 7(2) prescribes a $200 fee for horses eligible for fair finals at the time of entry. This fee has historically been required and paid by the racing participants, but has never been in the regulation before. This amendment includes explicit reference to the fee. A penalty provision has been added at the end to ensure consistency of results in adjudication of violations.
   (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.
   (c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
   (d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons conducting or participating in horse races at county fairs are affected.
   (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new actions for compliance are required; the rules are merely clarified.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear rules are established concerning the conduct of harness race meetings at county fairs.
   (d) An estimate of how much it will cost the administrative body to implement this administrative regulation:
      (a) Initially: No cost.
      (b) On a continuing basis: No cost.
      (e) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
      (f) 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 necessary.
   (3) Determine whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A
   (9) TIERING: Is tiering applied? Tiering is not applied as the regulation applies equally to all persons conducting or participating in horse racing meetings at county fairs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Authority.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. No additional cost.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional cost.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional cost.
   (c) How much will it cost to administer this program for the first year? No additional cost.
   (d) How much will it cost to administer this program for subse-
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quent years? No additional cost. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

811 KAR 1:225. Substance abuse by Authority [commissioner] employees and licensees.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse [To regulate conditions under which horses] racing shall be conducted in Kentucky. KRS 230.290 provides that all licensees shall be subject to all administrative regulations promulgated by the commission. KRS 230.320 gives the commission the authority to promulgate administrative regulations under which a license may be denied, suspended, or revoked (that would result in disciplinary action being taken against a licensee) This administrative regulation prohibits licensees of the Kentucky Racing Commission from using alcohol or engaging in illegal drug use or activity while performing their duties, provides for drug and alcohol testing, and establishes consequences for violations of this administrative regulation.

Section 1. Definitions. (1) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.
(2) "Association" is defined by KRS 230.210(1).
(3) "Commission" is defined by KRS 230.210(2).
(4) "Crimes involving drugs and drug paraphernalia" means all activities involving drugs and drug paraphernalia which are made illegal under KRS Chapter 218A or any other statutes or administrative regulations of this Commonwealth, and similar laws and regulations of other states and the United States, and which include the use, possession, or trafficking in marijuana, cocaine, or any other controlled substance, possession or distribution of drug paraphernalia, or obtaining or using prescription drugs without a valid prescription.
(5) "Documentation" means proof of regular attendance at meetings, counseling sessions, clean drug test results (if suspended for a drug violation), and certification from the treatment program indicating full compliance with treatment and completion of the program.
(6) "Drug paraphernalia" means all equipment, products, and material of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body an illegal drug in violation of any law or administrative regulation of this Commonwealth, any state, or the United States.
(7) "Licensee" means a person who:
(a) Has been duly issued a current and valid license to participate in horse racing in this Commonwealth;
(b) is actively involved with the day to day activities associated with the training and handling of a horse; and
(c) is not attending or participating in the sale [scene] of horses conducted on the premises of associations.
(8) "Under the influence of intoxicants" means a person's mental or physical abilities are impaired by the presence of alcohol or other drugs in his body to the degree that the person is not able to safely and properly perform his job functions.

Section 2. Prohibited Activities. A licensee shall not:
(1) Be under the influence of intoxicants while:
(a) Engaged in the activities for which the license is held; or
(b) On association grounds;
(2) Commit any crime involving drugs or drug paraphernalia;
(3) Fail to comply with substance abuse treatment required pursuant to an evaluation conducted under this administrative regulation;
(4) Tamper with a drug or alcohol test; or
(5) Refuse to submit to drug or alcohol testing upon request of the Authority, a steward, a [or] judge, or any other authorized employee of the Authority [commissioner].

Section 3. Evidence of Violation. The following shall be presumptive evidence of a violation of this administrative regulation:
(1) A breath, urine, or blood test result revealing an alcohol concentration of 0.05 percent or more while:
(a) Engaged in the activities for which the license is held; or
(b) On association grounds;
(2) A positive result from a drug test for marijuana, cocaine, or other controlled substance for which the licensee does not have a current and valid prescription while:
(a) Engaged in the activities for which the license is held; or
(b) On association grounds;
(3) A positive result from a prescribed medication for which the individual has a valid prescription, but [except] the prescription for which indicates that taking the medication may impair vision, impair the ability to perform normal daily functions, or cause drowsiness, or the prescription for which advises using care when operating a car or machinery, or impair the ability to perform normal daily functions while:
(a) Engaged in the activities for which the license is held; or
(b) On association grounds;
(4) A positive result indicating more than one (1) prescribed medication for which the individual has valid prescriptions, but [except] the prescription directions for which advise against taking more than one (1) prescribed medication at a time while:
(a) Engaged in the activities for which the license is held; or
(b) On association grounds;
(5) A positive result that exceeds the allowable limit prescribed on the medication label while:
(a) Engaged in the activities for which the license is held; or
(b) On association grounds;
(6) A conviction in any court of law for a drug-related offense.

Section 4. Discipline. (1) First offense.
(a) For a first time violation of this administrative regulation, the offender's license shall be suspended.
(b) The offender shall be required to undergo an evaluation by a professional in the field of addictive or substance abuse disorders approved by the commission.
(c) If the evaluator determines the existence of a substance abuse problem, the offender shall be required to comply with the recommended course of treatment.
(d) Upon the expiration of seven (7) calendar days from the date of the suspension, the offender may request to be reinstated by the Authority presiding judge [commissioner, stewards].
(e) For a first time violation of this administrative regulation for an alcohol infraction or crime involving drugs and drug paraphernalia, the judges [stewards] shall have the discretion to impose a lesser penalty and may excuse the offense for counting purposes under this administrative regulation.
(2) Second offense.
(a) For a second violation of this administrative regulation within a three (3) year period, the offender's license shall be suspended.
(b) The offender shall be required to enroll in and complete a substance abuse program approved by the commission.
(c) Upon the expiration of sixty (60) calendar days from the date of the suspension, the offender may request to be reinstated by the commission stewards or judges.
(3) Third offense. A third violation of this administrative regulation within a three (3) year period shall result in the revocation of the offender's license.

(4) Zero tolerance offense. Conviction in any court of law of a drug trafficking offense shall result in revocation of the offender's license even if it is a first offense under this administrative regulation.

(5) Preexisting offenses. A previous violation of 811 KAR 1:225, Section 3, relating specifically to intoxication or drug addiction shall be counted as a previous offense under this section.

(6) Fines. Any offender under this administrative regulation may [also] be fined not less than fifty (50) dollars nor more than $1,000, at the discretion of the commission or stewards, in addition to any suspension imposed.

(7) In determining the three (3) year period under this administrative regulation, the period shall be measured from the date on which the violation occurred. If the violation is a failure to complete recommended treatment, the violation date shall be calculated from the date of the first missed meeting, or session.

Section 5. Reinstatement after Suspension. (1) To be reinstated after the first offense the offender shall submit:
   (a) Documentation of the completed evaluation;
   (b) The recommendation of the evaluator in writing; and
   (c) If treatment is recommended, evidence of compliance with the imposed course of treatment.

(2) After second offense. To be reinstated after the second offense, the offender shall submit documentation of compliance with the imposed course of treatment.

(3) Continuing compliance with treatment.
   (a) If an offender is reinstated before the completion of the imposed course of treatment, continuing compliance with treatment shall be required.
   (b) Documentation of continuing compliance and final completion of treatment shall be provided upon request to the presiding judge [stewards or judges] or other employee authorized by the Authority [commission].
   (c) Failure to comply with and complete the imposed course of treatment after reinstatement shall be deemed an additional violation.

Section 6. In deciding when drug tests should be administered, the presiding judge [stewards or judges] may require:
   (1) All licensees to be tested on a particular day;
   (2) Licensees on a particular day to be tested totally at random; or
   (3) Those licensees that the presiding judge has [stewards or judges have] a reasonable suspicion may be under the influence of intoxicants to submit to drug and alcohol testing.

In deciding whether there is reasonable suspicion to require testing, the presiding judge [stewards or judges] may consider any of the following factors:

(a) Unexplained or continued violations of the statutes or administrative regulations which have a detrimental effect on racing;
(b) Involvement in any accident which causes injury to a person or animal at the track as well as any near accident which poses [creates] a clear danger of accident or injury to a person or animal at the track;
(c) Willful conduct detrimental to horse racing as evidenced by continued violations of the statutes or administrative regulations, other disciplinary problems, behavioral problems, disturbances, or other similar conduct at the track;
(d) Observable physical or emotional impairment at the track;
(e) Observation in a race of questionable outcome or circumstance as determined by the presiding judge [stewards or judges in the exercise of their expertise];
(f) Willful abuse of an animal or person who is engaged in a race, work, or exercise at the track;
(g) Prior positive drug or alcohol test or tests in this or other jurisdictions, excluding those for which a valid legal prescription has been provided;
(h) Performance of prescribed duties in a manner which indicates a best effort to win is not present at [a] the track;
(i) Information supplied by:

1. A law enforcement agency;
2. The United States Trotting Association;
3. The Kentucky Horsemen's Association;
4. The Standardbred Investigative Services;
5. The Association or Racing Commissioners International; or
6. The racing commission of any state or country;

(i) Any other [physicians] conduct at the track which can be documented and which provides [would indicate] reasonable grounds to suspect [believe] the existence of, dependence on, possession of, or use of:
   1. Dependence on, possession of, or use of a controlled substance; or
   2. An alcohol violation;
   (k) Refusal to provide a urine or blood sample when requested to do so [within this administrative regulation]; or
   (l) Recent arrest or pending criminal charges regarding the sale, possession, manufacture, cultivation, or use of illegal drugs.

Section 7. Payment for Expenses Related to this Administrative Regulation. A license [licensee] shall be responsible for all or part of the expenses associated with violating this administrative regulation, including the cost of treatment and reinstatement of the license. The responsibility for payment of expenses shall be as follows:

(1) For a first offense, the offender's responsibility for costs shall be at the discretion of the presiding judge [stewards or judges] or other authorized Authority [commission] employee.

(2) For a second offense, the offender shall bear all costs.

(3) For a drug or alcohol test initiated by the Authority [commission] to determine if a violation has occurred, the Authority [commission] shall bear the cost unless the test reveals a violation. If the test reveals a violation, subsections (1) and (2) of this section shall apply.

(4) Failure to pay any costs imposed shall be grounds for denial of reinstatement.

Section 8. Administration of Administrative Regulation. The Authority [commission] shall employ a competent individual to oversee and assist in the administration of this administrative regulation. The presiding judge of the Authority [stewards and judges of the commission] shall enforce this administrative regulation under the direction of the Authority [commission] and its authorized employees.

WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 7, 2006, at 11 a.m., at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4053 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by Wednesday, September 20, 2006, 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1442.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: P. J. Cooksey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes the rules for penalizing and providing recovery programs for Authority employees and licensees with substance abuse problems.
(b) The necessity of this administrative regulation: The regulation is necessary to establish a consistent and organized procedure for addressing substance abuse by Authority employees and licensees.
(c) How this administrative regulation conforms to the content of the other authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
(d) How this administrative regulation will assist or will assist in the effective administration of the statutes: The administrative regulation ensures that horse races are governed by a consistent body of rules concerning procedures dealing with substance abuse issues.
(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 only clarifications to the language of the regulation and serves to bring this administrative regulation into conformity with KRS Chapter 13A drafting requirements.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.
(c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Authority licensees and employees with substance abuse problems are affected.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No steps for compliance are required; the regulation is merely clarified.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear rules are established concerning substance abuse issues.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A.
(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 necessary.
(e) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.
(9) TIERING: Is tiering applied? Tiering is not applied as the regulation applies equally to all Authority licensees and employees with substance abuse issues.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
5. How much will it cost to administer this program for the first year?
6. How much will it cost to administer this program for subsequent years?
   Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
   Revenues (+/-):
   Expenditures (+/-):
   Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long-Term Care and Community Alternatives
(Amendment)

907 KAR 1:450. Nurse aide training criteria and registry.
RELATES TO: KRS 205.520, 42 C.F.R. 438.150 - 438.158, 1819, 1919 of the Social Security Act
NECESSITY, FUNCTION, AND CONFORMITY: [EO-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 Medicaid Program. KRS 205.520(3) authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes requirements for [see-forth] the nurse aide training and competency evaluation program [requirements] and specifies the establishment and function of the nurse aide registry.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.
(2) "Competency examination [evaluation-program]" means a written or oral examination that is:
(a) Described by 42 C.F.R. 483.154; and
(b) Used as a standard for determining satisfactory completion of a nurse aide training and competency evaluation program [the competency evaluation program required by 42 U.S.C. 1386 for nurse aides employed by Medicaid participating nursing facilities prior to October 1, 1989, when the program is approved by the state in which the nursing facility is located].
(3) "Department" means the Department for Medicaid Services or its designee [and its designated agents and representatives].
(a) "Licensed health professional" means a:
(b) Physician;
(c) Physician assistant;
(d) Nurse practitioner;
(e) Registered nurse;
(f) Licensed practical nurse;
(g) Registered dietitian; or
(h) Licensed or certified social worker.

(5) "Nurse aide" means an individual who has successfully completed the nurse aide training and competency evaluation program and may include—(including) a nursing student, medication aide, or (and) a person employed through a nursing pool, who provides nursing or nursing-related services to a resident in a nursing facility, excluding:
(a) An individual who is a licensed health professional;
(b) A volunteer who provides the nursing or nursing-related services without monetary compensation; or (and)
(c) A person who is hired by the resident or family to sit with the resident and who does not perform nursing or nursing-related services.

(6) "Nurse aide training and competency evaluation program [premises-(NATCEP)]" means a competency evaluation program that meets the requirements of 42 C.F.R. 483.152 [the program of nurse aide training and competency evaluation for nurse aides].

(7) "State approved program" means the nurse-aide training and competency evaluation program requirements established by the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program.

(8) "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse.

Section 2. General Requirements. If an individual has not satisfactorily completed the nurse aide training and competency evaluation program, a nursing facility that is enrolled in the Medicare Program pursuant to 483.157 shall not use the individual as a nurse aide on a:
(1) Permanent basis for more than four (4) months; or
(2) Temporary, per diem, leased, or any other basis that is not permanent.

Section 3. Course Requirements for the Nurse Aide Training and Competency Evaluation Programs and Instructor Qualifications. In accordance with 42 C.F.R. 483.152 and the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program, a nurse aide training and competency evaluation program shall:
(1) Consist of a minimum of seventy-five (75) clock hours of nurse aide instructional training;
(2) Include at least sixteen (16) hours of supervised practical training; and
(3) Require that the program’s instructor:
(a) Demonstrate completion of a course in teaching adults or have experience teaching adults; and
(b) Be a registered nurse who possesses a minimum of two (2) years of nursing experience, at least one (1) year of which shall be in the provision of long-term care facility services, or
(c) Be a licensed practical nurse who,
1. Has at least one (1) year of experience; and
2. Provides instruction as a supplement to the registered nurse instructor.

Section 4. Regular In-service Education and Ongoing Staff Development. A nursing facility shall provide and document that at least twelve (12) hours of ongoing staff development training is given annually to each nurse aide who:
(1) Is employed by the facility; and
(2) Has satisfactorily completed the nurse aide training and competency evaluation program.

Section 5. Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs. (1) The following may request approval from the department to provide a nurse aide training and competency evaluation program:
(a) The Kentucky Community and Technical College System (KCTCS);
(b) The Office of Career and Technical Education, Department for Workforce Investment, Education Cabinet;
(c) A nursing facility;
(d) A community college;
(e) A university program;
(f) A licensed proprietary education program;
(g) A health care facility that is licensed in accordance with KRS 311B.015(2) and maintains a nurse aide training and competency evaluation program to its own employees; or
(h) A nonprofit, church-related or tax-supported program that is not identified in paragraphs (a) through (g) of this subsection.

(2) In order to provide a nurse aide training and competency evaluation program, an entity identified in subsection (1) of this section shall be approved by the department.

(3) In accordance with 42 C.F.R. 483.15(c), the department shall, within ninety (90) days of receipt of a request for approval or receipt of additional information:
(a) Advise a requesting entity if its nurse aide training and competency evaluation program has been approved; or
(b) Request additional information from the requesting entity.

(4) The department shall conduct an on-site review of each nurse aide training and competency evaluation program that is approved:
(a) Within one (1) year of initial approval; and
(b) Annually thereafter.

Section 6. Withdrawal of Approval. (1) The department shall withdraw approval of a nurse aide training and competency evaluation program if the entity providing the program does not:
(a) Meet the minimum requirements of 42 C.F.R. 483.152 or 483.154;
(b) Permit an unannounced visit by the department; or
(c) Submit an acceptable plan of correction if requested by the department upon completion of an on-site review.

(2) The department shall not approve a nurse aide training and competency evaluation program offered by, or in a nursing facility that, within the previous two (2) years:
(a) Operated under a waiver in accordance with section 1819(b)(4)(C)(iii)(I) of the Social Security Act by which the facility was not required to engage the services of a registered professional nurse for more than forty (40) hours per week;
(b) Operated under a waiver in accordance with section 1919(b)(4)(C)(i) of the Social Security Act that was granted on the basis of a demonstration by the facility of its inability to provide nursing care for more than forty-eight (48) hours per week;
(c) Has been subject to an extended, or partial extended, survey conducted by the cabinet under sections 1819(g)(2)(B)(i) or 1919(h)(2)(B)(i) of the Social Security Act;
(d) Has been assessed a civil money penalty described in sections 1819(h)(2)(B)(ii) or 1919(h)(2)(A)(ii) of the Social Security Act of no less than $5,000, or
(e) Has been subject to one (1) of the following actions:
1. Denial of payment in accordance with section 1819(b)(2)(B)(i) of the Social Security Act for individuals entitled to benefits under Title XIII of the Act;
2. Assessment of temporary management or oversight of the facility in accordance with sections 1819(h)(2)(B)(ii) or 1919(h)(2)(A)(ii) of the Social Security Act;
3. Termination of the facility’s participation:
   a. In accordance with section 1819(h)(4) of the Social Security Act;
   b. In the Medicaid Program in accordance with section 1919(h)(1)(B)(i) of the Social Security Act;
   4. Denial of payment under Medicaid’s Title XIX State plan in accordance with section 1919(h)(1)(B)(i) of the Social Security Act for any individual admitted to the nursing facility after notice of the denial has been made to the public and the facility;
   5. Closure of the facility or transfer of residents to other facilities in accordance with section 1919(h)(2)(A)(iv) of the Social Security Act;
   6. If the department withdraws approval of a nurse aide training and competency evaluation program, the department shall, in accordance with 42 C.F.R. 483.151(4)(d):
(a) Notify the nurse aide training and competency evaluation program in writing;
(b) Indicate the reason for withdrawal of approval; and
(c) Allow each student who has started a nurse aide training and competency evaluation program for which approval has been withdrawn to complete the course.

(d) In accordance with section 1919(0)(2)(C) of the Social Security Act, the department may allow a nurse aide training and competency evaluation program to be provided in, but not by, a nursing facility that meets one (1) of the conditions of subsection (2) of this section if the department;

(a) Determines that there is not another training and competency evaluation program offered within a reasonable distance of the facility;

(b) Assures, through an effort to oversee operation of the facility, that an adequate environment exists for operating the training and competency evaluation program in the facility; and

(c) Provides notice to the cabinet's long-term care ombudsman of the determination described by paragraph (a) of this subsection and assurance described by paragraph (b) of this subsection.

Section 7. Competency Examination and Competency Evaluation.

(1) Except for a nursing facility, an entity identified in Section 5(1) of this administrative regulation shall administer and allow an individual to choose between a final written or oral competency examination.

(2) In accordance with 42 C.F.R. 483.154(b)(1), the competency examination shall:

(a) Address each course requirement;

1. As specified in 42 C.F.R. 483.152(b), and

2. Identified in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program;

(b) Be developed from a pool of test questions, only a portion of which shall be used in any one (1) competency examination;

(c) Use a system that prevents disclosure of both the pool of questions and the individual competency examinations; and

(d) If oral, be read from a prepared text in a neutral manner;

(e) In accordance with 42 C.F.R. 483.154(c)(4), the skills demonstration portion of the nurse aide training and competency evaluation shall be:

(a) Performed in a facility or laboratory setting comparable to the setting in which the individual shall function as a nurse aide; and

(b) Administered by a registered nurse with at least one (1) year's experience in providing care for the elderly or chronically ill of any age.

(f) A competency examination candidate shall submit the following to the nurse aide training and competency evaluation program prior:

(a) An unexpired state or federally-issued photo identification;

(b) A Social Security card that has not been laminated;

(c) If a competency examination candidate's social security card states, "Not valid for employment without Immigration and Customs enforcement authorization", or contains a similar statement, the candidate shall present an employment authorization document issued by the Department of Homeland Security;

(d) A competency examination candidate's full name and middle initial shall be the same on each personal document presented to the nurse aide training and competency evaluation program prior;

(e) In accordance with 42 C.F.R. 483.154(e):

(a) An individual shall pass the written or oral competency examination and the skills demonstration for satisfactory completion of the nurse aide training and competency evaluation program; and

(b) A record of successful completion of the nurse aide training and competency evaluation program shall be included in the nurse aide registry within thirty (30) days of the date of completion.

(f) In accordance with 42 C.F.R. 483.154(f), an agency that administers the competency examination shall advise each individual who does not complete the examination satisfactorily:

(a) Of the areas which the individual did not pass, and

(b) That the individual has at least two (2) additional opportunities to take the examination.

Section 8. State Nurse Aide Registry. (1) The department, through an interagency agreement with the Kentucky Board of Nursing, shall be responsible for establishing and maintaining a registry of all nurse aides who have:

(a) Satisfactorily completed a nurse aide training and competency evaluation program upon successful completion of the competency examination;

(b) Been granted an exception pursuant to 42 C.F.R. 483.152(c);

(c) A finding of resident or patient neglect, abuse, or misappropriation of resident or patient property by a nurse aide shall be maintained on an abuse registry pursuant to 306 KAR 1:100.

Section 9. Reciprocity. (1) The department shall grant reciprocity for a nurse aide who is on another state's nurse aide registry if:

(a) The other state provides documentation that the individual is on its registry;

(b) An employment record provided to the department's nurse aide registry verifies that twenty-four (24) months have not elapsed since the individual worked for pay as a nurse aide; and

(c) The individual is not listed on the other state's registry of resident abuse, neglect, or misappropriation of resident property.

(2) The department shall not grant reciprocity for an individual whose name appears on any state's abuse registry.

Section 10. Reimbursement for Costs Incurred in Administering a Nurse Aide Training and Competency Evaluation Program. (1) Reimbursement to a nursing facility for costs associated with a nurse aide training and competency evaluation program shall be available:

(a) In an amount specified in subsection (2) of this section; and

(b) For a nurse aide who:

1. Is employed by the facility;

2. Receives an offer of employment from the facility within twelve (12) months of completing a nurse aide training and competency evaluation program.

(2) The maximum amount of reimbursement available to a nursing facility for costs incurred by an individual who completes the nurse aide training and competency evaluation program shall be forty-five (45) cents per Medicaid patient day.

(3) To receive reimbursement, a nursing facility shall report:

(a) The number of Medicaid patient days on the Nursing Facility Supplemental Medicaid Schedule NF-7 (included in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program) for the twelve (12) month period preceding October 1 of the current fiscal year;

(b) The costs incurred for an aide to complete the nurse aide training and competency evaluation program on the MAP-576, Nurse Aide Training Expenditure Report and Authorization for Payment Form included in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program.

(4) The department shall reimburse a nursing facility for a nurse aide if the nurse aide has been employed by another facility that received reimbursement for the aide's nurse aide training and competency evaluation program costs.

Section 11. Incorporation by Reference. The "Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program, March 2005 edition" is incorporated by reference. (1) A participating nursing facility shall not use an individual as a nurse aide on a permanent basis for more than four (4) months if the individual:

(a) Has not completed the:

1. Nurse aide training and competency evaluation program; or

2. The competency program, if the individual was used by the facility prior to October 1, 1989 as a nurse aide; or

(b) Has not met the competency evaluation prior to January 1, 1989.

(2) A facility shall not use an individual as a nurse aide on a temporary, per diem, leased or other non-full-time basis if the person has not completed the:

(a) Nurse aide training and competency evaluation program; or

(b) Competency evaluation program.
Section 3. Regular In-service Education and Ongoing Staff Development. Following successful completion of the nurse-aide competency evaluation program, each nursing facility shall be required to provide and document, as specified in the Medicaid Services Manual for Nurse-Aide Training and Competency Evaluation Program, twelve (12) hours of ongoing staff development annually for each nurse aide.

Section 4. Minimum Curriculum and Content Requirements. (1) The nurse-aide training program shall at a minimum consist of no less than seventy-five (75) hours, which includes a minimum of sixteen (16) hours of supervised practical training.

(2) Criteria for primary instructors, program coordinator, trainers, resource people, and curriculum content shall be shown in the Medicaid Services Manual for the Nurse-Aide Training and Competency Evaluation Program.

Section 5. Approval, Initial-Postapproval Review, and Ongoing Review of Nurse-Aide Training Programs. (1) The nurse-aide training program shall be conducted by:

(a) The Department for Technical Education;
(b) A licensed facility;
(c) Community college;
(d) University program;
(e) A licensed proprietary education program;
(f) A licensed health care facility offering a nurse-aide training program to its own employees; or
(g) A nonprofit, church-related or tax-supported program that is not identified in the above categories.

(2) All entities specified in subsection (1) of this section that wishes to provide nurse-aide training shall request and receive approval of the agency's training program by the department prior to operating the nurse-aide training program in accordance with the criteria shown in the Medicaid Services Manual for Nurse-Aide and Competency Evaluation Program.

(3) After initial approval of the training program, each program shall be monitored as follows:

(a) An approved nurse-aide training program conducted by a nursing facility shall be monitored on site by the department during the regularly scheduled annual survey for compliance with conditions of participation. A self-evaluation shall be submitted to the department every two (2) years.

(b) An approved nurse-aide training program conducted by the Department for Technical Education shall be monitored on site by the Cabinet for Workforce Development monitoring system at least every two (2) years. A self-evaluation shall be submitted by the training program to the on-site review agency each year that an on-site review is not performed. The results of these reviews shall be compiled by the Department for Technical Education and forwarded to the department on an annual basis.

(c) The department shall conduct an on-site review of all other approved nurse-aide training programs at least every two (2) years, and the training program provider shall submit to the department a self-evaluation in each year that an on-site review is not performed.

Section 6. Termination of Nurse-Aide Training Programs. (1) The department shall terminate participation in the training program for a previously approved nurse-aide training program that does not:

(a) Meet minimum requirements, and
(b) Submit an acceptable plan of correction.

(2) A nurse-aide training program offered by or in a nursing facility shall not be approved if the facility fails within any of the prescribed clauses described in 42 U.S.C. §1396(h)(2) (B)(m)(I)(Aa), (b), and (c).

Section 7. Final Examination and Competency Evaluation. The Department for Technical Education or other qualified entity as approved by the department shall, by agreement with the department, responsible for the final written oral examination and the skills demonstration portion of the competency evaluation.

Section 8. State Nurse-Aide Registry. (1) The department, through an interagency agreement with the Division of Licensing and Regulation, Office of the Inspector General, shall be responsible for establishing and maintaining a registry of all nurse-aides who have:

(a) Satisfactorily completed a nurse-aide training and competency evaluation program;
(b) Satisfactorily completed a competency evaluation program;

c) Been granted an exception.

(2) The registry shall include specific documented findings by the Commonwealth of Kentucky of individual resident abuse or neglect, or misappropriation of resident property by nurse-aides listed in the registry, determined in accordance with 42 C.F.R. §486.8(g), and a brief statement (if any) by the nurse-aide deputing the finding. A finding included on the registry after the nurse-aide has been provided:

(a) At least ten (10) days advance notice of the proposed finding and
(b) An opportunity for a hearing (if desired) for the nurse-aide to rebut allegations.

(3) The Division of Licensing and Regulation shall disclose or divulge information as a result of an inquiry to the registry if the information disclosed concerning the finding also contains the following:

(a) The statement of rebuttal, if it was filed by the nurse-aide; or
(b) A clear and accurate summary of the statement.

(4) The department through its agent may periodically notify other state, state or local, or interested parties of the names of individuals who have completed the requirements to be placed on a nurse-aide registry.

Section 9. Reciprocity. (1) A nurse-aide who is on another state's nurse-aide registry shall be granted reciprocity in Kentucky if:

(a) The other state's registry provides appropriate written documentation showing the individual is on the other state's registry;

(b) An employment record provided to the Division of Licensing and Regulation verifies that twenty-four (24) months have not elapsed since the individual worked for pay as a nurse-aide, and

(c) There is not documented findings on the registry of individual resident abuse or neglect, or misappropriation of resident funds for the individual on the registry.

(2) Reciprocity shall not be given to an individual whose name appears on another state's abuse registry.


(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: August 15, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 2006, 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 shall 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 2, 2006. Send written notification of Intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON, Jill Brown, Office of Legal Services, 275 East Main Street 5 W-8, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7753.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for state review and approval of nurse aide training and competency evaluation programs. This administrative regulation further establishes standards for training nurse aides and for evaluating their competency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for state review and approval of nurse aide training and competency evaluation programs, and to establish standards for training nurse aides and for evaluating their competency.

(c) The administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing requirements for state review and approval of nurse aide training and competency evaluation programs, and by establishing standards for training nurse aides and for evaluating their competency.

(d) How this administrative regulation currently assists or will assist the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the authorizing statutes by establishing requirements for state review and approval of nurse aide training and competency evaluation programs, and by establishing standards for training nurse aides and for evaluating their competency.

(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 is primarily technical in nature in that it clarifies existing policy, contains drafting revisions to ensure compliance with KRS Chapter 13A, and as well applicable language from federal regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify existing policy and to ensure compliance with KRS 13A drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by clarifying the requirements for state review and approval of nurse aide training and competency evaluation programs, and by clarifying the standards for training nurse aides and for evaluating their competency.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by clarifying the requirements for state review and approval of nurse aide training and competency evaluation programs, and by clarifying the standards for training nurse aides and for evaluating their competency.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities affected by this administrative regulation include: approximately 130 schools (i.e., colleges, vocational schools); approximately 30 nonprofit and/or proprietary educational businesses; and approximately 300 nursing facility nurse aide training programs, all currently enrolled as participating providers in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not be required to take additional action to comply with this amendment, because it is primarily technical in nature and clarifies existing requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nurse aide training and competency evaluation program providers and nurse aides will not incur additional costs in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Because this amendment is primarily technical in nature and clarifies existing policy, providers will benefit from the agency's clarification of the standards used for state review and approval of nurse aide training and competency evaluation programs, and nurse aides will benefit from the agency's clarification of the standards used to evaluate their competency.

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

(a) Initially: No additional expenditures are necessary to implement this amendment.

(b) On a continuing basis: No additional expenditures are necessary to implement this amendment on an on-going basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under Title XIX of the Social Security Act and state matching funds are used to implement this administrative regulation; however, the amendment does not require additional funding.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 U.S.C. 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for Indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et. seq. This administrative regulation complies with 42 C.F.R. 483.150 through 483.158 by establishing requirements for state review and approval of nurse aide training and competency evaluation programs, and by establishing standards for training nurse aides and for evaluating their competency.

2. State compliance standards. This administrative regulation complies with KRS 205.520, which authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity that may be presented by federal law.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation conforms to the standards contained in 42 C.F.R. 483.150 through 483.158.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, then those required by the federal mandate? This administrative regulation does not set stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect only a local government agency that owns or operates a nursing facility.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation 42 C.F.R. 483.150 through 483.158.

4. Describe the effects of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

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

Revenues (+/-): 

Expenditures (+/-): 

Other Explanation: No additional expenditures are necessary to implement this amendment

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)

921 KAR 3:042. Food Stamp Employment and Training Program.

RELATES TO: 7 C.F.R. 273.24, 7 U.S.C. 2015(d)
STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 273.7
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is required by 7 C.F.R. 273.7 to administer a Food Stamp Employment and Training Program. KRS 194A.050(1) 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. This administrative regulation establishes technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program.

Section 1. Definitions. (1) Employment and training program* or *EAT* means a program with work experience, education, or training components, designed to assist able-bodied food stamp recipients in obtaining employment and becoming self-sufficient.

(2) "Exempt" means excused by the agency from participation in the EAT (employment and training program).

(3) (9) "Vocational Educational Skills Training" or "VEST" means a program in which a participant receives training in order to meet a work requirement.

(4) (9) "Work Experience Program" or "WEP" means a program in which a participant receives work experience in order to meet a work requirement.

Section 2. Work Registration. (1) Unless exempt from work requirements as specified a household member [not meeting exemption criteria] in subsection (4) of this section, shall register for work:

(a) At the time of initial application for food stamps; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by the:

(a) Member required to register; or

(b) Person making application for the household.

(3) Unless otherwise exempt, a household member excluded from the food stamp case register of work during periods of disqualification. An excluded person may be an:

(a) Ineligible alien; or

(b) Individual disqualified for:

1. Refusing to provide or apply for a Social Security number; or

2. An intentional program violation.

(4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1)

[The following individuals] shall be exempt from work registration requirements:

(a) A person:

1. Younger than sixteen (16) years of age; or

2. Sixty (60) years of age or older;

(b) A person age sixteen (16) to seventeen (17) who is:

1. Not a head of a household;

2. Attending school; or

3. Enrolled in an employment training program on at least a half-time basis;

(c) A person with a physical or mental disability;

(d) A household member subject to and complying with a work requirement in the Kentucky Transitional Assistance Program or "K-TAP;"

(e) A parent or other household member who is responsible for the care of:

1. A dependent child under age six (6); or

2. An incapacitated person;

(f) A person who:

1. Receives unemployment compensation; or

2. Has applied for, but not yet received, unemployment compensation, if the person was required to register for work with the Department of Employment Services as a part of the unemployment compensation application process;

(g) A regular participant in:

1. Substance abuse program; or

2. Alcohol treatment and rehabilitation program;

(h) A person who is employed or self-employed and:

1. Working at least thirty (30) hours weekly; or

2. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

(i) A migrant or seasonal farm worker who:

1. Meets the criteria in paragraph (h) of this subsection; and

2. Is under contract or in an agreement with an employer or grower to begin employment within thirty (30) days; or

(j) A student enrolled at least half-time in a recognized school, training program, or institution of higher education, if the student has met the eligibility conditions in 921 KAR 3:025, Section 3.

(5) A household member who loses exemption status due to a change in circumstances [subject to the reporting requirements of the Food Stamp Program] shall register for [to] work in accordance with 7 C.F.R. 273.7(b)(2), at the:

(a) Time the change is reported, if the change is:

1. Loss of employment that results in a loss of income;

2. Change in household composition, including the addition or loss of a household member; or

(b) Household's next re-certification, if the change in circumstances involves a change not subject to reporting requirements in paragraph (a) of this subsection.

(6) After registering for work, a nonexempt household member shall:

(a) Respond to a cabinet request for additional information regarding employment status or availability for work;

(b) In accordance with 7 C.F.R. 273.7(a)(1)(y), accept a bona fide offer of suitable employment as specified in 7 C.F.R. 273.7(h) [Section 5 of this administrative regulation], at an wage not lower than the state or federal minimum wage; or [and]
(c) In accordance with 7 C.F.R. 273.7(a)(1)(6), participate in the E&T [Food Stamp Employment-and-Training] Program, if assigned by the cabinet.

(7) Household member making a joint application for SSI, as defined in 921 KAR 3:010, and food stamps, shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6) [shall be] waived for a household member applying at a Social Security Administration Office, for both supplemental-security-income and food stamps at the same time. The waiver shall expire upon completion of the Social Security income determination.

(8) The E&T [food stamp employment-and-training] worker shall explain to the food stamp applicant the:

(a) Work requirements for each nonexempt household member;
(b) Rights and responsibilities of the work-registered household members; and
(c) Consequences of failing to comply.

Section 3. E&T [Employment and Training] Participation. (1) An individual subject to the work requirement of 921 KAR 3:025, Section 3(8) shall participate in the E&T [Food Stamp Employment and Training] Program.

(2) An E&T [food stamp employment-and-training] participant shall:

(a) Attend and complete an initial assessment interview;
(b) Be placed in:
   1. VEST; or
   2. WEP;
(c) Receive a twenty-five (25) dollar per month reimbursement for actual [miscellaneous] expenses incurred while participating in the E&T [Food Stamp Employment and Training] Program up to twenty-five (25) dollars per month, if otherwise eligible; and
(d) Complete and return to the cabinet a FSET-108, "Job Search Contact Report," or a FSET-145, "Employment and Training Program Activity Report," [written verification of Employment and Training Program activities] in order to verify and be reimbursed for participation expenses, as specified in paragraph (c) of this subsection.

(3) A participant who withdraws or is terminated, voluntarily or involuntarily, from the program, shall:

(a) Be provided with a [as] FSET-119, "Employment and Training Program Notification of Termination"; and
(b) Complete and file the applicable form with the cabinet in order to be reimbursed in accordance with subsection (2)(c) of this section.

Section 4. Components. (1) A county offering the E&T [Employment and Training] Program shall offer the following services and activities:

(a) The VEST Program consisting of:
   1. Vocational school; or
   2. On-the-job training; and
(b) The WEP Program consisting of:
   1. Job search; and
   2. Work placement.

(2) An individual participating in VEST shall:

(a) Attend training courses for at least twenty (20) hours per week; and
(b) Participate in the WEP component until a VEST placement is available.

(3) An individual participating in WEP shall:

(a) Complete an initial assessment and develop an employability plan;
(b) Participate in the initial thirty (30) days of job search;
(c) Complete and file with the cabinet the FSET-108, [Job Search Contact Report];
(d) Provide written verification by the WEP provider of E&T [Employment and Training] Program activities to the cabinet; and
(e) Satisfy the work requirement, in accordance with 921 KAR 3:025, Section 3(6), by:
   1. Accepting the offer of a work site placement; and
   2. Working at the assigned work site placement for the minimum monthly number of hours required by subsection (4) or (5) of this section.

(4) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement of 921 KAR 3:025, Section 3(6), shall be determined by comparing the monthly food stamp allotment to the Work Experience Program Table, incorporated by reference in this administrative regulation.

(5) If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement of 921 KAR 3:025, Section 3(6), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by:

(a) Dividing the food stamp allotment by the number of individuals who are subject to the work requirement; and
(b) Comparing the individual pro rata share of the food stamp allotment to the Work Experience Program Table, incorporated by reference in this administrative regulation.

Section 5. Conciliation. (1) If a participant fails to comply with the E&T [Food Stamp Employment and Training] Program:

(a) The participant shall be mailed a FSET-102 "Conciliation Contact and Request for Information" form; and
(b) A conciliation period shall be initiated.

(2) The conciliation period shall be used to:

(a) Determine the reason for the noncompliance; and
(b) Allow the participant the opportunity to resolve the problem in order to continue participation.

(3) Conciliation shall last for fifteen (15) days, during which time the E&T [food stamp employment-and-training] worker shall:

(a) Determine if the participant demonstrates good cause for noncompliance;
(b) Encourage the participant to resume an E&T Program [food stamp employment-and-training] activity, or
(c) Recommend disqualification for failure to comply with program requirements, if the worker determines that there was no good cause for the participant's failure to comply.

(4) If the participant resumes the E&T Program [food stamp employment-and-training] activity, a sanction shall not be imposed.

(5) If conciliation is unsuccessful and the participant fails or refuses to demonstrate good cause, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) A determination of good cause shall be undertaken if:

(a) Work registrant has failed to comply with:
   1. Work registration requirements as established in Section 2 of this administrative regulation; or
   2. E&T [Employment and Training] requirements as established in Section 3 of this administrative regulation; or
   (b) Household member has, as described in Section 9 of this administrative regulation, voluntarily,
      1. Quit a job; or
      2. Reduced their work effort.

(2) In accordance with 7 C.F.R. 273.7(h)(2), the determination of good cause shall be granted for [include consideration of] circumstances beyond the control of the individual, such as:

(a) Illness of the individual;
(b) Illness of another household member requiring the presence of the individual;
(c) A household emergency;
(d) Unavailability of transportation; and
(e) Lack of adequate care for a child of age six (6) to twelve (12) for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

(a) A circumstance specified in subsection (2) of this section exists;
(b) The employment became unsuitable, in accordance with 7 C.F.R. 273.7(h), or
(c) A circumstance specified in 7 C.F.R. 273.7(s) exists.

Section 7. Disqualification. (1) Disqualifications shall be imposed on a household member who:

(a) Is a mandatory participant; and
(b) [as] Fails to comply with the work registration or E&T program requirements [food stamp employment-and-training], including work registration, or
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(b) Determined to have voluntarily and without good cause quit a job or reduced the work effort, as established in Section 8 [9] of this administrative regulation.

(2) An individual disqualified from participation in the Food Stamp Program shall be ineligible to receive food stamp benefits until the latter of the:
(a) Date the individual complies; or
(b) Following time periods:
   1. Two (2) months for the first violation;
   2. Four (4) months for the second violation; or
   3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:
(a) Becomes exempt from the work registration; or
(b) Serves the disqualification period specified in subsection (2) of this section; and
(c) Complies with the requirements of:
   1. Work registration; or
   2. The Employment and Training Program.

(4) A disqualified household member who joins a new household shall:
(a) Remain ineligible for the remainder of the disqualification period specified in subsection (2) of this section; or
(b) Have income and resources counted with the income and resources of the new household; and
(c) Not be included in the household size when determining the food stamp allotment.

Section 8. Unusual Employment. Employment shall be considered unusual if:
(1) The wage offered is less than the highest of the following:
   (a) The applicable state or federal minimum wage; or
   (b) Eighty (80) percent of the federal minimum wage if the federal or state minimum wage is not applicable;

(2) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly-wage specified in subsection (1) of this section;

(3) The household member, as a condition of employment or continuing employment is required to join, resign from, or refrain from joining a legitimate labor organization;

(4) The employment offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under 29 U.S.C. 178 and 46 U.S.C. 165;

(5) The household member or worker-involved demonstrates that the:
(a) Degree of risk to health and safety is unreasonable;
(b) Member is physically or mentally unable to perform the employment as documented by:
   1. Medical evidence; or
   2. Reliable information from another source;
(c) The employment offered within the first thirty (30) calendar days is not in the member's major field of experience;

(6) The employment offered is at a site that exceeds two (2) hours per day, not including transportation of a child to and from a child care facility;

(7) The distance to the place of employment is:
   1. Prohibit walking; and
   2. Public and private transportation to the job site is unavailable; or

(8) The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs.

Section 9. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Following the minimum period of disqualification imposed pursuant to Section 7(2) of this administrative regulation, eligibility and participation may be reestablished by:
(a) Securing new employment with salary or hours comparable to the job lost; or
(b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification.

(2) An individual may reestablish participation in the Food Stamp Program following a disqualification period, as established in Section 7(2) of this administrative regulation if the individual applies and is determined to be eligible.

(3) If an individual becomes exempt from work registration, the disqualification period shall end and the individual shall be eligible to apply to participate in the Food Stamp Program.

Section 10. Hearing Process. If aggrieved by an action that affects participation, a work registrant may request a hearing in accordance with 921 KAR 3.070.

Section 11. Reimbursement. An individual shall complete and file with the cabinet a written request to have a reimbursement check for employment or training replaced after loss or theft.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "FSET-102, Conciliation Contact and Request for Information", edition 11/05 [10/02];
(b) "FSET-108, Job Search Contact Report", edition 11/06 [4042];
(c) "FSET-119, Food Stamp Employment and Training Program Notification of Termination", edition 11/06 [4042]; [and]
(d) "FSET-145, Employment and Training Program-Activity Report", edition 11/06; and
(b) "The Work Experience Program Table", edition 3/97.
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.

TOM EMBERTON, Jr., Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LFC: August 14, 2006 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2006, 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 on this hearing shall contact this agency in writing by September 14, 2006, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the 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 2, 2006. Send written notice 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, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle, DCBS Regulation Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to operate the Food Stamp Employment and Training Program as required by 7 C.F.R. 273.7.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under 7 C.F.R. 273.7 to administer a Food Stamp Employment and Training Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the technical eligibility requirements for the Food Stamp Employment and Training Program in accordance with 7 C.F.R. 273.7.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment will change the administrative regulation by specifying that participant shall receive a reimbursement for actual expenses up to $25 per month instead of receiving a set reimbursement amount of $25 per month once participation is verified.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the administrative regulation to comply with 7 C.F.R. 273.7(d)(3)(i).
(c) How the amendment conforms to the content of the authorizing statutes: The amendment will implement the requirements established in 7 C.F.R. 273.7 for providing a reimbursement to Food Stamp Employment and Training Program participants.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will correct the procedures for providing a reimbursement to Food Stamp Employment and Training Program participants, providing reimbursement for actual expenses up to the state limit of $25, in accordance with 7 C.F.R. 273.7.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
Approximately 2200 food stamp recipients are referred for participation in the Food Stamp Employment and Training Program each month, and all of these participants are affected by this administrative regulation. The administrative regulation has no impact on businesses, organizations, or state and local governments.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take for compliance with this administrative regulation or amendment: This amendment will require Food Stamp Employment and Training Program participants to provide the Cabinet with a statement listing actual expenses related to participating in E&T, in order to receive reimbursement for expenses up to the state limit of $25.
(b) In complying with this administrative regulation or amendment, how much will it cost the regulated entities identified in question (3): E&T participants currently have to verify participation in order to receive the $25 reimbursement. Therefore, the participant's cost will remain the same after this amendment, as they will simply be stating actual participation expenses when they verify their participation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the participant chooses to verify a statement to verify actual participation expenses for the E&T program, they will be reimbursed for those expenses up to the state limit of $25.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional funding required.
(b) On a continuing basis: No additional funding required.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding will be State General Funds and Food Stamp Federal Funds. The funding has been appropriated in the enacted 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: There are no fees and no increase in funding for this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all participants or entities regulated by this regulation. The requirements established in this administrative regulation will be applied in a like manner on a statewide basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Family Support, will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This program has been operational for numerous years and does not directly generate any revenue. This amendment will not generate any additional revenues in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This program has been operational for numerous years and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? This program has been operational for numerous years. This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This program has been operational for numerous years. This amendment will not require any additional costs in subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the Federal mandate. 7 C.F.R. 273.7
2. State compliance standards. None
3. Minimum or uniform standards contained in the Federal mandate. The provisions of the administrative regulation comply with the Federal mandate.
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 imposed.
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 1:050. General administration policies and circulars.

RELATES TO: KRS 13A.010, 13A.100, 13A.120, 131.130(1)
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY, FUNCTION AND CONFORMANCE: Kentucky law requires administrative bodies, when promulgating statements of general applicability that implement, interpret, or prescribe law or policy, to do so only through an administrative regulation. The Department of Revenue has many policies and circulars, a number of which predate the enactment of KRS Chapter 13A, that conflict with current tax laws. The purpose of this administrative regulation is to formally withdraw general administration policies and circulars.

Section 1. The following general administration policies and circulars of the Department of Revenue are withdrawn and shall not be effective or recognized for any purpose:

(1) Revenue Circular 10C001 - Tax Provisions of the Enterprise Zone Law. This circular is being withdrawn, because it restates KRS 154.45-010(7), 154.45-010(9), and 305 KAR 1:010. Furthermore, this policy is obsolete, because Enterprise Zones are phasing out across the Commonwealth and are replaced with the Kentucky Enterprise Initiative under the provisions of KRS 154.20-200 to 154.20-216.

(2) Revenue Circular 10C030 - Kentucky Tax Registration Application. This circular is being withdrawn, because it restates guidance provided in 103 KAR 1:050.

(3) Revenue Policy 10P010 - Due Dates for Payment of Tax. This policy is being withdrawn, because it restates KRS 446 030(1).

(4) Revenue Policy 10P011 - Records Retention requirements. This policy is being withdrawn, because it restates KRS 131.130 and 131.185.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on September 28, 2006, at 10 a.m. in Room 125 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gary C. Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks, Frankfort, Kentucky 40601; phone (502) 564-5495, fax (502) 564-3392.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gary Morris
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals all obsolete Department of Revenue general administration policies and circulars that are in conflict with KRS Chapter 13A.
(b) The necessity of this administrative regulation: The administrative regulation is necessary in order to repeal policies and circulars which are no longer relevant and are in conflict with KRS Chapter 13A.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A130 provides that an administrative body shall not by internal policy, memorandum, or other form of action modify a statute or administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By repealing the circulars relating to both corporation and individual income taxes, the Department of Revenue will be in compliance with KRS 13A.130.
(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:
(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 business entities and individuals that have a Kentucky tax filing responsibility are impacted by this administrative regulation.
(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Business entities and individuals that have a Kentucky tax filing responsibility will follow the current version of the applicable statutes and 103 KAR 1:050.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The impacted entities will not have the administrative burden of attempting to comply with Department of Revenue policies and circulars that are in conflict KRS Chapter 13A.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation, since it applies to all business entities and individuals that have a Kentucky tax filing responsibility.
cities, counties, fire departments, or school districts? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? No cost.
(d) How much will it cost to administer this program for subsequent years? No cost.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(New Administrative Regulation)

103 KAR 8:080. Ad valorem taxation of machinery associated with extraction, severance, dredging, or mining operations.

RELATES TO: KRS 132.020(1), 132.200(4)
STATUTORY AUTHORITY: KRS 131.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 132.020(1) and 132.200(4) provide that machinery actually engaged in manufacturing is subject to a state tax of fifteen cents ($0.15) upon each $100 of value and is exempt from ad valorem taxation by any county, city, school, or other taxing district in which it has a taxable situs. This administrative regulation provides guidance for determining what machinery associated with mining and similar operations qualifies for the ad valorem tax treatment.

Section 1. Definition. "Manufacturing machinery" means machinery actually engaged in manufacturing that is subject to the state ad valorem tax of fifteen cents ($0.15) upon each $100 of value provided in KRS 132.020(1) and exempt under KRS 132.200(4) from ad valorem taxation by any county, city, school, or other taxing district in which it has a taxable situs.

Section 2. Machinery used in extraction, severance, dredging, or mining of coal and other minerals. Machinery used in the extraction, severance, dredging, or mining of coal and other minerals is not manufacturing machinery for purposes of KRS Chapter 132.

Section 3. Machinery associated with mining or similar operation that is engaged in manufacturing. Only machinery actually used in the crushing, sizing, and washing of coal and other minerals is manufacturing machinery. No other machinery associated with extraction, severance, dredging, or mining operations is manufacturing machinery, regardless of where in the operation it is located. Machinery actually used in crushing, sizing, and washing does not include structures housing the crushing, sizing, or washing machinery and machinery used to move, store, or load the coal or mineral when it is not actually being crushed, sized, or washed.

JOHN FARRIS, Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on September 28, 2006, at 3 p.m. in Room 125 Capitol Annex, 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 the required 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 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Beth A. Brosmore, Executive Director, Office of Property Valuation, Department of Revenue, Finance and Administration Cabinet, 200 Fair Oaks Lane, Station 30, Frankfort, Kentucky 40602, phone (502) 564-8338, fax (502) 564-8192.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Beth A. Brosmore
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation provides guidance for determining what machinery associated with mining and similar operations qualifies for the tax rate $0.15 per $100 ad valorem tax treatment.
(b) The necessity of this administrative regulation. The regulation helps clarify the distinction between the property tax manufacturing provisions and the sales and use tax manufacturing exemption. Merely perpetuates the long-standing property tax standing as defining this type of equipment as machinery and equipment subject to full state and local rates.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.030(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer all tax statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides guidance for classification for this type of property.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation. These questions do not apply.
(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: Any business engaged in mining or severance of coal or minerals
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None
(5) Provide an estimate of how much it will cost the administra-
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Office of Property Valuation, Department of Revenue, Finance and Administration Cabinet.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. There will be no effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? Nothing
   (d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(Act 3 New Administrative Regulation)

103 KAR 8:110. Apportioned vehicles.

RELATES TO: KRS 132.487
STATUTORY AUTHORITY: KRS 131.130, 132.487, 136.188(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws. KRS 136.188(2)(a) enacted by the 2006 GA requires the Department of Revenue to promulgate an administrative regulation designating an authoritative source of depreciation values for the determination of the annual fee imposed on apportioned motor vehicles by KRS 136.188(1).

Section 1. Effective January 1, 2007, Marshall & Swift/Boeckh, LLC shall be the designated authoritative source of vehicle depreciation values for the determination of the annual fee imposed on apportioned motor vehicles by KRS 136.188(1).

JOHN FARRIS, Secretary
APPROVED BY AGENCY: August 15, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on September 28, 2006, at 3 p.m. in Room 125 Capitol Annex, 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 the required 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 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation for:

CONTACT PERSON: Beth A. Brosmore, Executive Director, Office of Property Valuation, Department of Revenue, Finance and Administration Cabinet, 200 Fair Oaks Lane, Station 30, Frankfort, Kentucky 40620, phone (502) 564-8338, fax (502) 564-8192.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Brosmore
1. Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation defines what publication is meant by the term "authoritative source" used in KRS 136.188(2)(a). It sets a common source for the valuation of trucks, which is used to calculate the annual fee for Motor Carriers.
   (b) The necessity of this administrative regulation: KRS 136.188(2)(a) enacted by the 2006 GA requires the Department of Revenue to promulgate an administrative regulation designating an authoritative source of depreciation values for the determination of the annual fee imposed on apportioned motor vehicles by KRS 136.188(1).
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation designates an authoritative source of depreciation values for the determination of the annual fee imposed on apportioned motor vehicles by KRS 136.188(1).
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: There will be no change in the administration of the law from a practical standpoint. Because there are various valuation methods for trucks, this regulation just puts the Department and Motor Carriers on the same page as to what source will be used.
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new regulation in response to new legislation in 2006.
   (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
   (e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The following groups will all feel some effect: Motor Carriers across North America who must pay ad valorem fee at the time of IRP registration, The Department of Revenue, and Kentucky IRP to the extent that they collect in state registration process out of state registration.
   (f) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment,
including: The regulation will impact the entities above, because it provides one necessary component in the computation of the total ad valorem fees imposed by KRS 136.188.

(a) List the actions that each of the regulated entities identified in question (5) will have to take to comply with this administrative regulation or amendment: They will pay the ad valorem fee at the time of IRS registration based partly on the valueation provided by the newly defined "authoritative source".

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to the carrier will depend upon the amount of travel through Kentucky, but that is a function of the ad valorem fee and not a regulation. The regulation itself should cause no harm.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): We will have 100% compliance with Motor Carriers due to legislation, and there should be no change as a result of this regulation. The setting of the authoritative source by regulation was one of the requests from the regulated entity in order to receive its support for the legislation. Motor Carriers will pay both registration and ad valorem fees at the same time to eliminate any additional fee return due to the Department of Revenue. It is a one-stop shop for the Motor Carriers.

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

(a) Initially: $374

(b) On a continuing basis: $306 annually

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None; necessary materials already obtained by the Office of Property Valuation.

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

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

9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation, because, as a general property tax provision, this regulation would apply equally to all Motor Carriers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State Government, Department of Revenue, and all Counties, Fire Departments, School Districts, and all other local jurisdictions that levy a motor vehicle property tax rate will receive additional monies in 2007 as a result of KRS 136.188.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 136.188(2)(a).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation in itself will not generate additional revenues but the new legislation will.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Same as above.

(c) How much will it cost to administer this program for the first year? This regulation will not cost anything to administer.

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):
Expenditures (+/-).
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)


RELATES TO: KRS 13A.010, 13A.100, 13A.120, 131.130(1) STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY, FUNCTION AND CONFORMITY: Kentucky law requires administrative bodies, when promulgating statements of general applicability that Implement, Interpret, or prescribe law or policy, to do so only through an administrative regulation. The Department of Revenue has many policies and circulars, a number of which are being withdrawn, which predate the enactment of KRS Chapter 13A, that conflict with current tax laws. The purpose of this new regulation is to formally withdraw joint individual and corporation income taxes policies and circulars.

Section 1. The following joint individual and corporation income taxes policies and circulars of the Department of Revenue are withdrawn and shall not be effective or recognized for any purpose:

1. Revenue Policy 40P020 - Forfeiture of Income Tax Overpayments. This policy is being withdrawn, because it restates the authority provided in KRS 44.030.

2. Revenue Policy 40P030 - Taxable Periods of Partnerships, S Corporations, and Personal Service Corporations. This policy is being withdrawn, because it states the authority provided in KRS 141.140(1).

3. Revenue Policy 41P090 - Jobs Tax Credit. This policy is being withdrawn, because it conflicts with KRS 141.010(11) and (13).

4. Revenue Circular 40C003 - Taxation of Federal & Certain Nonfederal Obligations & Their Income for Kentucky Income & Inangible Property Tax Purposes. This circular is being withdrawn, because it restates two statutes, KRS 141.010(10)(a) and (12)(a).

5. Revenue Circular 40C005 - Kentucky Depreciation System Corporate and Noncorporate. This circular is being withdrawn, because it restates KRS 141.0101.

6. Revenue Circular 40P030 - Corporate and Individual Income Tax Special Provisions. This circular is being withdrawn, because guidance on these issues is provided in corporate and individual income tax forms instructions which are incorporated into 103 KAR 1.050.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on September 28, 2006, at 10 a.m. in Room 125 Capitol Annex, 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 the required 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 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gary C. Morris, Executive Director, Of-
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gary Morris

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals all obsolete Department of Revenue joint corporation and individual income taxes policies and circulars that are in conflict with KRS Chapter 13A.
(b) The necessity of this administrative regulation: The administrative regulation is necessary in order to repeal policies and circulars which are no longer relevant and are in conflict with KRS Chapter 13A.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.130 provides that an administrative body shall not, by Internal policy, memorandum, or other form of action, modify a statute or administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: By repealing the policies and circulars relating to both corporation and individual income taxes, the Department of Revenue will be in compliance with KRS 13A.130.
(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 statute: N/A
(3) List the type and number of individuals, businesses, organizations, or states and local governments affected by this administrative regulation: Corporations and individuals filing income tax returns with Kentucky may be affected by this administrative regulation.
(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(b) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(c) TIERING. Is revenue applied? Tiering does not apply to this administrative regulation, as it applies to all corporations and individuals filing a Kentucky tax return.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. A small increase in expenditures for the Department of Revenue will occur to notify taxpayers of the change.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Withdrawal of Revenue Policy 41P090 will result in an unknown increase in General Fund receipts in the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Withdrawal of Revenue Policy 41P090 will result in an unknown increase in General Fund receipts in subsequent years.
(c) How much will it cost to administer this program for the first year? Unknown. A small increase in expenditures will occur in the first year of implementation.
(d) How much will it cost to administer this program for subsequent years? No costs in subsequent years.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 16:350. Corporation income taxes policies and circulars.

RELATES TO: KRS 13A.010, 13A.100, 13A.120, 131.130(1)

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION AND CONFORMITY: Kentucky law requires administrative bodies, when promulgating statements of general applicability that implement, interpret, or prescribe law or policy, to do so only through an administrative regulation. The Department of Revenue has many policies and circulars, a number of which predate the enactment of KRS Chapter 13A, that conflict with current tax laws. The purpose of this regulation is to formally withdraw corporation income tax policies and circulars.

Section 1. The following corporation income taxes policies and circulars of the Department of Revenue are withdrawn and shall not be effective or recognized for any purpose.
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(1) Revenue Policy 41P010 - Cooperatives. This policy is being withdrawn, because it conflicts with KRS 141.160.
(2) Revenue Policy 41P020 - Short Period Return or Change in Tax Period Resulting from Change in Ownership - This policy is being withdrawn, because it restates KRS 141.140(1).
(3) Revenue Policy 41P030 - Six-year Statute of Limitations. This policy is being withdrawn, because it restates KRS 141.210(3).
(4) Revenue Policy 41P040 - Declaration of Estimated Tax Penalty. This policy is being withdrawn, because it restates KRS 141.990(3).
(5) Revenue Policy 41P070 - Income and Deductions. This policy is being withdrawn, because it restates KRS 141.010(12) and (13).
(6) Revenue Policy 41P071 - Claim of Right. This policy is being withdrawn, because it was incorporated into 103 KAR 16:320.
(7) Revenue Policy 41P080 - Coal Royalty Income. This policy is being withdrawn, because it restates KRS 141.010(12)(d).
(8) Revenue Policy 41P100 - Deductibility of State Taxes. This policy is being withdrawn, because it restates KRS 141.010(13).
(9) Revenue Policy 41P110 - Deductibility of State Taxes. This policy is being withdrawn, because it restates KRS 141.010(13)(a) and the holding of a court decision.
(10) Revenue Policy 41P120 - Deductibility of State Taxes. This policy is being withdrawn, because it restates KRS 141.010(13)(a) and the holding of a court decision.
(11) Revenue Policy 41P121 - Deductibility of State Taxes. This policy is being withdrawn, because it restates KRS 141.010(13)(a) and the holding of a court decision.
(12) Revenue Policy 41P125 - Windfall Profit Tax. This policy is being withdrawn, because it restates KRS 141.010(13) and the provision of the Internal Revenue Code referred to in the policy has been repealed.
(13) Revenue Policy 41P130 - Taxation of Income from Activities on the Outer Continental Shelf. This policy is being withdrawn, because it restates KRS 141.010(12) through (14) and 141.120 and the holding of a court decision.
(14) Revenue Policy 41P140 - Subpart F Income. This policy is being withdrawn, because it conflicts with KRS 141.010(12).
(15) Revenue Policy 41P150 - Expenses Related to Nonbusiness or Non-taxable Income. This policy is being withdrawn, because it was incorporated into 103 KAR 16:060.
(16) Revenue Policy 41P160 - First-Year Net Operating Loss. This policy is being withdrawn, because it restates KRS 141.012, which was repealed effective for taxable years beginning on or after January 1, 2006.
(17) Revenue Policy 41P170 - Sales Factor. This policy is being withdrawn, because it is in conflict with KRS 141.120 and 103 KAR 16:270.
(18) Revenue Policy 41P180 - Property Factor. This policy is being withdrawn, primarily because it restates provisions of KRS 141.120. Some statements in the policy are also in conflict with provisions of KRS 141.120 and are in conflict with 103 KAR 16:290.
(19) Revenue Policy 41P190 - Net Rental Income. This policy is being withdrawn, because it restates KRS 141.120.
(20) Revenue Policy 41P200 - Partnership and Joint Venture Income Classified Business Income. This policy is being withdrawn, because it conflicts with KRS 141.205 and 103 KAR 16:270.
(21) Revenue Policy 41P210 - Business Apportionment Factor for Corporations Reporting Income on Completed Contract Method. This policy is being withdrawn, because it was incorporated into 103 KAR 16:340.
(22) Revenue Policy 41P220 - Separate Accounting. This policy is being withdrawn, because statements in the policy conflict with KRS 141.200(15). Parts of the policy not in conflict with KRS 141.200(15) were incorporated into 103 KAR 16:330.
(23) Revenue Policy 41P230 - Financial Organizations. This policy is being withdrawn, because it was incorporated into an amendment to 103 KAR 16:150.
(24) Revenue Policy 41P240 - Homeowners Associations. This policy is being withdrawn, because it restates KRS 141.040 and 141.010.
(25) Revenue Policy 41P250 - Taxation of Foreign Sales Corporations and Domestic International Sales Corporations. This policy is being withdrawn, because it restates portions of KRS 141.200(15) and 141.040.
(26) Revenue Policy 41P260 - Corporate Distributions, Liquidations, and Reorganizations. This policy is being withdrawn, because it restates KRS 141.010(10).
(27) Revenue Circular 41C020 - Safe Harbor or Dinance Leases. This circular is being withdrawn, because it restates the authority provided in KRS 141.010(12)(h) and 141.010(13)(e).

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on September 28, 2006, at 10 a.m. in Room 125 Capitol Annex, 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 the required 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 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gary C. Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gary Morris
(a) What this administrative regulation does: The administrative regulation repeals Department of Revenue policies and circulars relating to corporate income tax that either conflict with KRS Chapter 13A or have been incorporated into an existing administrative regulation.
(b) The necessity of this administrative regulation: The administrative regulation is necessary in order to repeal policies and circulars which are no longer relevant and are in conflict with KRS Chapter 13A.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.130 provides that an administrative body shall not, by internal policy, memorandum, or other form of action, modify a statute or administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By repealing the policies and circulars relating to corporate income tax that are not in conflict with KRS Chapter 13A.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- The policy will change this existing administrative regulation: N/A
- The necessity of this amendment to this administrative regulation: N/A
- The necessity of this amendment to the authorizing statutes: N/A
- How the amendment will assist in the effective administration of the statutes: N/A
- List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: N/A
- The provisions of KRS 141.010(25) will be affected by this administrative regulation.
- Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-
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tive regulation, if new, or by the change if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Corporations filing a Kentucky corporation income tax return will follow only the statutes and administrative regulations as all policies and circulars will be repealed.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Corporations complying with this administrative regulation may incur additional costs if they followed policies and circulars that are contrary to statute.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Corporations will not have the administrative burden of complying with Department of Revenue policies and circulars.

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

(a) Initially: There will be a minimal cost initially to implement this administrative regulation for the Department of Revenue. Costs associated with notifying taxpayers of this administrative regulation will be incurred.
(b) On a continuing basis: There will be no additional cost on a continuing basis as a result of this administrative regulation for the Department of Revenue.

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

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

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

TIERING: Is tiering applied? Tiering does not apply to this administrative regulation, as it applies to all corporations filing a Kentucky corporation income tax return.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS Chapter 13A.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. A small increase in expenditures for the Department of Revenue will occur to notify taxpayers of this change.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There may be a small increase in revenues from taxpayers who followed policies and circulars that are contrary to statute.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There may be a small increase in revenues from taxpayers who followed policies and circulars that are contrary to statute.

(c) How much will it cost to administer this program for the first year? Unknown. A small increase in expenditures will occur in the first year of implementation.
(d) How much will it cost to administer this program for subsequent years? No costs for subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 17:110. Individual income taxes policies and circulars.

RELATES TO: KRS 13A.010, 13A.100, 13A.120, 131.130(1)
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY, FUNCTION, AND CONFORMITY: Kentucky law requires administrative bodies, when promulgating statements of general applicability that implement, interpret, or prescribe law or policy, do so only through an administrative regulation. The Department of Revenue has many policies and circulars that predate the enactment of KRS Chapter 13A and conflict with current tax laws. The purpose of this regulation is to formally withdraw individual income taxes policies and circulars.

Section 1. The following individual income taxes policies and circulars of the Department of Revenue are withdrawn and shall not be effective or recognized for any purpose:

(1) Revenue Policy 42P010 - Statute of Limitations. This policy is being withdrawn due to its lack of statutory authority.
(2) Revenue Policy 42P020 - Waiving Estimated Tax Penalty. This policy is being withdrawn due to its replication of a federal regulation concerning the refund of the estimated tax penalty provided for in KRS 141.990(2) and 131.180(3).
(3) Revenue Policy 42P021 - Estimated Tax Penalty. This policy is being withdrawn, because guidance on these issues is provided in the individual income tax forms and instructions which are incorporated into 103 KAR 1:050.
(4) Revenue Policy 42P022 - Estimated Tax Penalty. This policy is being withdrawn, because guidance on these issues is provided in the individual income tax forms and instructions which are incorporated into 103 KAR 1:050.
(5) Revenue Policy 42P030 - Credit for Tax to a Foreign Country. This policy is being withdrawn, because it is superseded by the General Assembly's revision of KRS 141.010, effective June 30, 2005, providing that "Any deduction allowed by the Internal Revenue Code for..." Code is measured by gross or net income" is not permitted for Kentucky tax purposes.
(6) Revenue Policy 42P041- Basis of Property Acquired from a Decedent. This policy is being withdrawn, because it was rendered obsolete due to federal law change enumerated in IRC Sec. 1014.
(7) Revenue Policy 42P065 - Joint Estimated Tax Payments-Divorced Taxpayers. This policy is being withdrawn, because guidance on these issues is provided in the individual income tax forms and instructions which are incorporated into 103 KAR 1:050.
(8) Revenue Policy 42P090 - Military Personnel. This policy is being withdrawn, because guidance on these issues is provided in the individual income tax forms and instructions which are incorporated into 103 KAR 1:050.
(9) Revenue Policy 42P110 - Military Resident-Nonresident Spouse. This policy is being withdrawn, because guidance on these issues is provided in the individual income tax forms and instructions which are incorporated into 103 KAR 1:050.
(10) Revenue Policy 42P120 - Division of Income. This policy is being withdrawn, because guidance on these issues is provided in 103 KAR 17:100.
(11) Revenue Policy 42P130 - Division of Income. This policy is being withdrawn, because guidance on these issues is provided in 103 KAR 17:100.
(12) Revenue Policy 42P160 - Taxability of Income of New Resident S Corporation Income- Nonresidents. This policy is being
withdrawn, because guidance on these issues is provided in 103 KAR 17:060 and in the individual income tax forms and instructions which are incorporated into 103 KAR 1:050.

(13) Revenue Policy 42P180 - S Corporation Income-Nonresidents. This policy is being withdrawn, because it restates KRS 141.020.

(14) Revenue Policy 42P182 - Alimony Deduction-Nonresidents. This policy is being withdrawn, because guidance on these issues is provided in 103 KAR 17:060 and in the individual income tax forms and instructions which are incorporated into 103 KAR 1:050.

(15) Revenue Policy 42P220 - Loss Carry-Forward by New Resident. This policy is being withdrawn, because it was unnecessary due to its educational-only nature and informal interpretation of a court case.

(16) Revenue Policy 42P280 - Premature Withdrawal of Individual Retirement Account (IRA) Penalty Tax. This policy is being withdrawn, because it was unnecessary due to its informal, educational-only nature.

(17) Fee Policy 42P290 - Individual Retirement Account-Part-Year Resident and Full-Year Nonresidents. This policy is being withdrawn, because guidance on these issues is provided in 103 KAR 17:060 and in the individual income tax forms and instructions which are incorporated into 103 KAR 1:050.

(18) Revenue Policy 42P320 - Moving Expense Deduction-Part-Year Resident. This policy is being withdrawn, because guidance on these issues is provided in 103 KAR 17:060 and in the individual income tax forms and instructions which are incorporated into 103 KAR 1:050.

(19) Revenue Circular 40C010 - Reporting Requirements for Nonresident Partners' or S Corporation Shareholders' Combined Kentucky Income Tax Return. This circular is being withdrawn, because it is obsolete. Guidance on these issues is provided in 103 KAR 1:050 and 103 KAR 18:070.

(20) Revenue Circular 42C005 - Reciprocity - Income Tax Credit Nonresidents. This circular is being withdrawn, because it repeals KRS 141.070 and guidance provided in 103 KAR 1:050.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on September 28, 2006, at 10 a.m. in Room 125 Capitol Annex, 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 the required 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 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gary Moms, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5435, fax (502) 564-3392.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gary Moms

(a) What this administrative regulation does: The administrative regulation withdraws all Department of Revenue policies and circulars applicable to individual income tax which predate the enactment of KRS Chapter 13A.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to remove the ambiguity concerning the status of these out-of-date policies and circulars.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These policies and circulars, although valid, have never been officially withdrawn. This administrative regulation will clarify that all of the policies and circulars have been abrogated by KRS Chapter 13A.

(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 is a new administrative regulation.

(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

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In theory, no one is affected. These policies and circulars have been voided since the passage of KRS Chapter 13A. However, this administrative regulation clarifies this fact for all taxpayers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals filing a Kentucky tax return will follow only the Kentucky statutes and administrative regulations as all policies and circulars will be withdrawn.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Individuals complying with this administrative regulation will not incur additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will not have the administrative burden of complying with Department of Revenue policies and circulars.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(h) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be needed for the implementation and enforcement of this administrative regulation.

(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: 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 does not establish any fees or directly or indirectly increase any fees.

(k) TIERING: Is tiering applied? Tiering was not applied in this administrative regulation. The regulation is the wholesale repeal of policies and circulars. As such, there are no separate "tiers" to regulate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state and local governments (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Income Taxation, Department of Revenue.

3. Identify each state and federal statute or federal regulation
that requires or authorizes the action taken by the administrative regulation. KRS 13A.010, 13A.100, and 131.130.

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

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

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

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-): 
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 18:170. Withholding tax circulars.

RELATES TO: KRS 13A.010, 13A.100, 13A.120, 131.130(1)

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION AND CONFORMITY: Kentucky law requires administrative bodies, when promulgating statements of general applicability that implement, interpret, or prescribe law or policy, to do so only through an administrative regulation. The Department of Revenue has many policies and circulars, a number of which predate the enactment of KRS Chapter 13A, that conflict with current tax laws. The purpose of this regulation is to formally withdraw obsolete withholding tax circulars.

Section 1. The following withholding tax circulars of the Department of Revenue are withdrawn and shall not be effective or recognized for any purpose:

(1) Revenue Circular 42C010 - Withholding Tax Reporting Procedures under the Kentucky Revitalization Authority. This circular is being withdrawn, because it is obsolete due to amendments to KRS 154 26 and 103 KAR 1:050.

(2) Revenue Circular 42C011 - Kentucky Withholding Tax Reporting Procedures Under the Kentucky Jobs Development Authority. This circular is being withdrawn, because it is obsolete due to amendments to KRS 154 24 and 103 KAR 1:050.

(3) Revenue Circular 42C012 - Kentucky Withholding Tax Reporting Procedures Under the Kentucky Rural Economic Development Authority. This circular is being withdrawn, because it is obsolete due to amendments to KRS 154.22 and 103 KAR 1:050.

(4) Revenue Circular 42C013 - Kentucky Withholding Tax Reporting Procedures Under the Kentucky Industrial Development Act. This circular is being withdrawn, because it is obsolete due to amendments to KRS 154 28 and 103 KAR 1:050.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on September 26, 2006, at 10 a.m. in Room 125 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gary C. Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks, Frankfort, Kentucky 40601, phone (502) 564-5485, fax (502) 564-3392.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation repeals all obsolete Department of Revenue withholding tax circulars.

(b) The necessity of this administrative regulation: The administrative regulation is necessary in order to repeal circulars which are no longer relevant and are in conflict with KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.130 provides that an administrative body shall not by internal policy, memorandum, or other form of action modify a statute or administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: By repealing the circulars relating to withholding tax, the Department of Revenue will be in compliance with KRS 13A.130.

(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 types and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Companies that are approved for tax credits under the Kentucky Industrial Revitalization Act, Kentucky Industrial Development Act, Kentucky Rural Economic Development Act, and Kentucky Jobs Development Act that are entitled to employee job assessment fees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Companies that are approved for tax credits under the Kentucky Industrial Revitalization Act, Kentucky Industrial Development Act, Kentucky Rural Economic Development Act, and Kentucky Jobs Development Act that are entitled to employee job assessment fees will follow the current version of the relevant statutes and 103 KAR 1:050.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The impacted entities will not have the administrative burden of attempting to comply with obsolete Department of Revenue circulars.

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

(1) Initially: There will be no cost initially to implement this administrative regulation for the Department of Revenue.

(2) On a continuing basis: There will be no additional cost on a continuing basis as a result of this administrative regulation for the
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Department of Revenue.

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

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation, as it applies to all companies that receive job assessment fees under the Kentucky Industrial Revitalization Act, Kentucky Industrial Development Act, Kentucky Rural Economic Development Act, and Kentucky Jobs Development Act.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year that the administrative regulation is to be in effect. A small increase in expenditures for the Department of Revenue will occur to notify taxpayers of this change.

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

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

(c) How much will it cost to administer this program for the first year? Unknown. A small increase in expenditures will occur in the first year of implementation.

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 20:030. Corporation license tax policies and circulars.

RELATES TO: KRS 13A.010, 13A.100, 13A.120, 131.130(1)
STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION AND CONFORMITY: Kentucky law requires administrative bodies, when promulgating statements of general applicability that implement, interpret, or prescribe law or policy, to do so only through an administrative regulation. The Department of Revenue has many policies and circulars, a number of which predate the enactment of KRS Chapter 13A, that conflict with current tax laws. The purpose of this administrative regulation is to formally withdraw corporation license tax policies and circulars.

Section 1. The following corporation license tax policies and circulars of the Department of Revenue are withdrawn and shall not be effective or recognized for any purpose:

(1) Revenue Policy 41P500 - Agreement to Extend Statute of Limitations. This policy is being withdrawn, because it restates KRS 134.580(5), which was codified as KRS 134.580(4) at the time of the policy's issuance. Corporation license tax was repealed effective for tax periods that end on or after December 31, 2005.

(2) Revenue Policy 41P510 - Final License Tax Return. This policy is being withdrawn, because it conflicts with KRS 136.070 and 136.030. Corporation license tax was repealed effective for tax periods that end on or after December 31, 2005.

(3) Revenue Policy 41P520 - Capital. This policy is being withdrawn, because it conflicts with KRS 136.070. This policy was made obsolete by 103 KAR 20:020, which provides guidance on the computation of capital. Corporation license tax was repealed effective for tax periods that end on or after December 31, 2005.

(4) Revenue Policy 41P530 - Borrowed moneys. This policy is being withdrawn, because it conflicts with KRS 136.070. Corporation license tax was repealed effective for tax periods that end on or after December 31, 2005.

(5) Revenue Policy 41P540 - Unearned Leasehold Income. This policy is being withdrawn, because it restates KRS 136.070. This policy was made obsolete by 103 KAR 20:020, which provides guidance on the computation of capital. Corporation license tax was repealed effective for tax periods that end on or after December 31, 2005.

(6) Revenue Policy 41P550 - Borrowed Moneys. This policy is being withdrawn, because it conflicts with KRS 136.070. Corporation license tax was repealed effective for tax periods that end on or after December 31, 2005.

(7) Revenue Policy 41P560 - Outer Continental Shelf. This policy is being withdrawn, because it restates KRS 136.070 and the holding of court decisions. Corporation license tax was repealed effective for tax periods that end on or after December 31, 2005.

(8) Revenue Policy 41P570 - Corporation License Tax Apportionment Factor. This policy is being withdrawn, because it conflicts with KRS 136.070. Corporation license tax was repealed effective for tax periods that end on or after December 31, 2005.

(9) Revenue Policy 41P580 - Sales Factor. This policy is being withdrawn, because it restates KRS 136.070. Corporation license tax was repealed effective for tax periods that end on or after December 31, 2005.

(10) Revenue Policy 41P590 - Homeowners Association. This policy is being withdrawn, because it restates KRS 136.070. Corporation license tax was repealed effective for tax periods that end on or after December 31, 2005.

(11) Revenue Policy 41P600 - Real Estate Investment Trusts. This policy is being withdrawn, because it restates KRS 136.070 and 446.010(8). Corporation license tax was repealed effective for tax periods that end on or after December 31, 2005.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: August 14, 2006

FILED WITH LRC: August 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on September 28, 2006, at 10 a.m. in Room 125 Capitol Annex, 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 the required 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 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 2, 2006. Send written notification of intent
to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gary C. Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gary C. Morris

1. Provide a brief summary of:
   (a) What this administrative regulation does: The administrative regulation repeals all Department of Revenue policies and circulars relating to corporate license tax which was repealed for tax periods ending on or after December 31, 2005.
   (b) The necessity of this administrative regulation: The administrative regulation is necessary in order to repeal policies and circulars which are no longer relevant and are in conflict with KRS Chapter 13A.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.130 provides that an administrative body shall not, by internal policy, memorandum, or other form of action, modify a statute or administrative regulation.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By repealing the policies and circulars relating to corporate income tax, the Department of Revenue will be in compliance with KRS 13A.130.

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
   (e) How this amendment will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:
      (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Corporations will need to take no action for tax periods that end on or after December 31, 2005.
      (b) How the amendment will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:
         (a) Corporations complying with this administrative regulation will not incur additional cost, unless they are audited for returns filed for tax periods that ended prior to December 31, 2005.
   (e) As a result of compliance, what benefits will accrue to the entities identified in question (3): Corporations that are no longer subject to the corporate license tax will have no need of the Department of Revenue policies and circulars for tax periods that end on or after December 31, 2005.
   (f) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
      (a) Initially: There will be a small administrative cost to inform taxpayers of this change.
      (b) On a continuing basis: There will be a small cost on a continuing basis to the Department or Revenue or the statute of limitations expires for issuance of license tax assessments.
   (g) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be needed for the implementation and enforcement of this administrative regulation. Existing funds will be used.
   (h) 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.

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

4. TIERING: Is tiering applied? Tiering does not apply to this administrative regulation, as it applies to all corporations filing a Kentucky corporation license tax return.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. A small increase in expenditures for the Department of Revenue will occur to notify taxpayers of this change.
5. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unknown.
6. An unknown increase in General Fund Receipts will occur by withdrawal of policies related to Borrowed Moneys.
7. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown.
8. An unknown increase in General Fund Receipts will occur by withdrawal of policies related to Borrowed Moneys.
9. Until the 4-year statute of limitations expires for the last year that license tax returns are due.
10. How much will it cost to administer this program for the first year? Unknown.
11. A small increase in expenditures will occur in the first year of implementation.
12. How much will it cost to administer this program for subsequent years? Unknown.
13. A small increase in expenditures will occur each fiscal year until such time that the statute of limitations expires for the last year that license tax returns are due.

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

GENERAL GOVERNMENT CABINET
Board of Nursing
(New Administrative Regulation)

RELATES TO: KRS 314.470
STATUTORY AUTHORITY: KRS 314.131
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.470, adopted the Nurse Licensure Compact. The compact requires the adoption of this administrative regulation.

Section 1. Definitions. (1) "Board" means the party state's regulatory body responsible for issuing nurse licenses.
2. "Information system" means the coordinated licensure information system.
3. "Primary state of residence" means the state of a person's declared permanent and principal home for legal purposes or domicile.
(4) "Public" means any individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc.

Section 2. Issuance of a License By a Compact Party State. (1) As of June 1, 2007, no applicant for initial licensure will be issued a compact license granting a multistate privilege to practice, unless the applicant first obtains a passing score on the applicable NCLEX examination or any predecessor examination used for licensure.

(2) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:
   (a) Driver's license with a home address;
   (b) Voter registration card displaying a home address; or
   (c) Federal income tax return declaring the primary state of residence.

(3) A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the process of changing the home state license application in the new home state for a period not to exceed thirty (30) days.

(4) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the thirty (30) day period in subsection (3) of this section shall be stayed until resolution of the pending investigation.

(5) The former home state license shall no longer be valid upon issuance of the home state license.

(6) If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state may take action in accordance with that state's laws and rules.

Section 3. Limitations on Multistate Licensure Privilege. (1) Home state boards shall include in all licensure disciplinary orders or agreements that limit practice or require monitoring the requirement that the licensee subject to said order or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order or agreement.

(2) This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state boards.

Section 4. Information System. (1) Levels of access.
   (a) The public shall have access to nurse licensure information limited to:
      1. The nurse's name;
      2. Jurisdiction(s) of licensure;
      3. License examination date(s);
      4. Licensure classification(s) and status(es);
      5. Public emergency and final disciplinary actions, as defined by contributing state authority; and
      6. The status of multistate licensure privileges.

   (b) Nonparty state boards shall have access to all information system data except current significant investigative information and other information as limited by contributing party state authority.

   (c) Party state boards shall have access to all information system data contributed by the party states and other information as limited by contributing nonparty state authority.

   (2) The licensee may request in writing to the home state board to review the data relating to the licensee in the information system. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The board shall verify and within ten (10) business days correct inaccurate data to the information system.

   (3) The board shall report to the information system within ten (10) business days:
      (a) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority);
      (b) Dismissal of complaint; and
      (c) Changes in status of disciplinary action or licensure encumbrance.

   (4) Current significant investigative information shall be deleted from the information system within ten (10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint.

   (5) Changes to licensure information in the information system shall be completed within ten (10) business days upon notification by a board.

SUSAN DAVIS, President
APPROVED BY AGENCY: August 11, 2006
FILED WITH LRC: August 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on "Hearing Date", at 9 a.m. ET 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 the agency in writing by "Cancellation Date", 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard 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 "Comments Date". 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
(1) Provide a brief summary of:
   (a) What the administrative regulation does: It implements provisions of the Nurse Licensure Compact, HB102 2006 GA
   (b) The necessity of this administrative regulation: KRS Chapter 314 requires the board to promulgate this administrative regulation
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The Nurse Licensure Compact Administrators, the group which oversees the implementation of the Nurse Licensure Compact, has set this administrative regulation.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. By implementing the Nurse Licensure Compact.
   (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:
      (b) The necessity of the amendment to this administrative regulation:
      (c) How the amendment conforms to the content of the authorizing statutes.
      (d) How the amendment will assist in the effective administration of the statutes:
      (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses practicing in Kentucky on a multistate privilege, number unknown.
      (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
         (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative
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. This administrative regulation establishes requirements for the control of nitrogen oxides (NOx) emissions from large boilers and turbines used in power plants, pursuant to the federal mandate published under the Clean Air Interstate Rule (CAIR), 40 C.F.R. 96.101 to 96.176. This administrative regulation is not more stringent than the provisions allowed under the federal mandate.

Section 1. Applicability. This administrative regulation shall apply to CAIR NOx units in Kentucky that are subject to 40 C.F.R. 96.104.

Section 2. Compliance Requirements. CAIR NOx units shall comply with the following requirements:

(1) 40 C.F.R. 96.101 to 96.106 (Subpart AA), "CAIR NOx Annual Trading Program General Provisions";
(2) 40 C.F.R. 96.110 to 96.114 (Subpart BB), "CAIR Designated Representative for CAIR NOx Sources";
(3) 40 C.F.R. 96.120 to 96.124 (Subpart CC), "Permits";
(4) 40 C.F.R. 96.150 to 96.157 (Subpart FF), "CAIR NOx Allowance Tracking System";
(5) 40 C.F.R. 96.160 to 96.162 (Subpart GG), "CAIR NOx Allowance Transfers"; and
(6) 40 C.F.R. 96.170 to 96.176 (Subpart HH), "Monitoring and Reporting".

Section 3. Methodology for the Allocation and Sale of CAIR NOx Annual Allowances. The number of CAIR NOx allowances to be allocated to each CAIR NOx 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 CAIR NOx allowances shall be the number of CAIR NOx allowances assigned to Kentucky by the U.S. EPA and approved in Kentucky's State Implementation Plan (SIP).

(2) The total number of CAIR NOx allowances assigned to Kentucky shall be divided into separate pools as follows:
   (a) Ninety-eight (98) percent of this amount allocated for each control period to units that commence commercial operation before:
      2. January 1, 2009, for the control period 2015; and
      3. Thereafter, January 1 of the year that is six (6) years before the first year of the next control period; and
   (b) Two (2) percent of this amount for each control period sold by the Commonwealth of Kentucky with the proceeds deposited into Kentucky's general fund.

(3) For each CAIR NOx unit, the baseline heat input in mmBtu shall be determined and shall be used to determine CAIR NOx allowances for the pool specified in subsection (2)(a) of this section as follows:
   (a) For CAIR NOx units commencing operation before January 1, 2001, and
      1. Operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for 2001 through 2005;
      2. Not previously operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for five (5) consecutive years of operation;
   (b) For units commencing operation on or after January 1, 2001, and operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for five (5) consecutive years of operation;
unit's adjusted control period heat input for the previous five (5) years of operation, the:
1. Adjusted control period heat input for a control period of not operating shall equal zero; and
2. Cabinet shall allocate CAIR NOx allowances for the unit.
(4) The adjusted control period heat input for each year shall be calculated as follows:
(a) If the unit is coal-fired during the year, the unit's control period heat input for that year shall be multiplied by 100 percent;
(b) If the unit is oil-fired during the year, the unit's control period heat input for that year shall be multiplied by sixty (60) percent; and
(c) If the unit is not subject to paragraphs (a) or (b) of this subsection, the unit's control period heat input for that year shall be multiplied by forty (40) percent.
(5) For a calendar year, the unit's control period heat input and the unit's status as coal-fired or oil-fired shall be determined:
(a) In accordance with 40 C.F.R. Part 75, if the unit is subject to 40 C.F.R. Part 75;
(b) By 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; or
(c) By the best available data obtained by the cabinet.
(6) For CAIR NOx units included in the pool specified in subsection (2)(a) of this section, the cabinet shall allocate CAIR NOx allowances to each CAIR NOx unit in an amount equal to the result obtained by:
(a) Multiplying the total amount of CAIR NOx allowances specified in subsection (2)(a) of this section by the baseline heat input to each unit and the heat input established under subsection (3)(c) of this section;
(b) Divided by the total amount of baseline heat input and the heat input established under subsection (3)(c) of this section for all applicable CAIR NOx units; and
(c) Rounding to the nearest whole CAIR NOx allowance, as appropriate.
(7) The cabinet shall submit to the U.S. EPA and CAIR NOx sources the CAIR NOx allowances to be allocated and sold from the pools specified in subsection (2) of this section in a format prescribed by the U.S. EPA by:
(b) October 31, 2009, for control period 2015; and
(c) October 31 of each year thereafter, for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.

Section 4. Compliance Supplement Pool. The CAIR designated representative may request early reduction credits and the allocation of CAIR NOx allowances from the compliance supplement pool established under 40 C.F.R. 96.143(a) for any CAIR NOx unit in the Commonwealth that achieves emission reductions in 2007 or 2008 or in both years when compared to the unit's NOx emission rate during the 2006 control period. Only emission reductions achieved in 2007 or 2008 or in both years that are not necessary to comply with any state or federal emissions limitation applicable during 2007 and 2008 may be used to request early reduction credits as specified in this section.

(1) The owners and operators of the CAIR NOx unit shall monitor and report the NOx emissions rate and the heat input of the unit in accordance with 40 C.F.R. 96.170 to 96.176 in each control period for which the early reduction is requested and for the 2006 control period. The difference resulting from subtracting the applicable 2007 or 2008 control period NOx emission rate from the 2006 control period NOx emission rate multiplied by the applicable 2007 or 2008 control period heat input divided by 2000, shall provide the amount in tons of the early reduction credit request.
(2) The CAIR designated representative shall submit to the cabinet by July 1, 2009, a request for allocation of an amount of CAIR NOx allowances from the compliance supplement pool:
(a) Not exceeding the sum of the amounts, in tons, of the unit's NOx emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during the years, determined in accordance with 40 C.F.R. 96.170 to 96.176; or
(b) Not exceeding the minimum amount of CAIR NOx allowance necessary to remove undue risk to the reliability of electricity supply.
(3) To make allocations pursuant to subsection (2)(b) of this section, the CAIR designated representative shall demonstrate that, in the absence of allocation of an amount of CAIR NOx allowances requested, the unit's compliance with CAIR NOx emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during the control period. This demonstration shall include a showing that the owners and operators shall not feasibly obtain a sufficient amount of:
(a) Electricity from other electricity generating facilities during the installation of control technology at the unit for compliance with the CAIR NOx emissions limitation to prevent undue risk; or
(b) CAIR NOx allowances in accordance with this section, or otherwise, to prevent undue risk.
(4) Early reduction credits shall be rounded to the nearest whole number and distributed in the form of one (1) NOx allowance for one (1) ton of NOx emission reduction.
(5) The cabinet shall distribute the early reduction credits on a proportional basis.
(a) The total amount of early reduction credit available to a CAIR NOx unit shall be determined by the following calculation:
1. The unit's baseline heat input determined in Section 3(3)(a)(1) of this administrative regulation;
2. Divided by the total amount baseline heat input pursuant to Section 3(3)(a)(1) of this administrative regulation of this section from all sources; and
3. Multiplied by the early reduction credits available pursuant to 40 C.F.R. 96.143(a).
(b) The unused early reduction credits shall be combined together and distributed pro rata to those CAIR NOx units with early reduction credits that exceeded the amount of credits made available by the cabinet pursuant to paragraph (a) of this subsection by the following calculation:
1. The applicable unit's emission reductions that exceeded the credits made available pursuant to paragraph (a) of this subsection;
2. Divided by the total NOx emission reductions that exceeded the credits provided under paragraph (a) of this subsection from all applicable units;
3. Multiplied by the total number of unused early reduction credits.
(c) Early reduction credits provided under paragraph (b) of this subsection shall not cause the early reduction credits allocated to the source to exceed the number of early reduction credits requested.
(6) By November 30, 2009, the cabinet shall determine and submit to the U.S. EPA the allocations under this section.

Section 5. Sale of CAIR NOx Allowances by the Commonwealth of Kentucky. (1) The Commonwealth of Kentucky shall establish an account pursuant to 40 C.F.R. 96.351(b) for the purpose of selling the CAIR NOx allowances in the pool specified in Section 3(2)(b) of this administrative regulation.
(2) The proceeds from the sale of the CAIR NOx allowances shall be deposited in the general fund of the Commonwealth of Kentucky.

JOHN W. CLAY, Deputy Secretary
For LaJuania S. Wilcher, Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2006, at 10 a.m. LT 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. 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 hear-
ing. 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. If you request a transcript, you will be required to pay for the transcript. 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 2, 2006.

Send written notification of intent to be heard at the hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkell 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:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the control of nitrogen oxides (NOx) emissions from any electric generating unit that is subject to the emissions of the Clean Air Interstate Rule (CAIR) NOx Trading Program. This administrative regulation will assist in mitigating interstate transport of NOx emissions.

(b) The necessity of this administrative regulation: The U.S. EPA is requiring 28 states and the District of Columbia to revise their State Implementation Plans (SIPs) to include control measures to reduce emissions of nitrogen oxides. NOx is a precursor to ozone. Reducing the emissions of NOx will assist in ozone nonattainment areas in achieving the national ambient air quality standard.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation is promulgated to reduce NOx emissions from electric generating units.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will reduce NOx emissions resulting in the protection of human health and the environment.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation does not amend any existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation does not amend any existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation does not amend any existing administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: This administrative regulation does not amend any existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The owners and operators, along with a designated representative of electric generating units will be subject to the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Each affected electric generating unit will have to possess allocators sufficient to cover their emissions. In the absence of the required allocations, the affected electric generating unit will have to purchase allocations from the CAIR NOx Annual Trading Program for excess emissions of NOx.

(b) How complete is this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost is an unknown entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The public will benefit from this administrative regulation.

(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 administrative regulation.

(b) On a continuing basis: There will not be any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement the proposed 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, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation applies to electric generating units producing more than 25 MWs for sale.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 C.F.R. 96.101 to 96.176 as published at 70 Fed. Reg. 25162 (May 12, 2005).

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 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 revise their State Implementation Plan to reduce the emissions of nitrogen oxides. The federal regulation contains model rules for multistate cap and trade programs for NOx emissions. The model rules provide states the ability to meet the required emissions reductions in a flexible and cost-effective manner. Each affected electric generating unit will have to possess allocations for the tons of emissions of NOx for each control period. In the absence of the required allocations, the affected electric generating unit will have to purchase allocations from the CAIR NOx Annual Trading Program for excess emissions of NOx. Each electric generating unit will have flexibility in controlling NOx emissions from the source.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation follows the federal regulation model rule and will impose no more stringent requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No known units, parts or divisions of state or local government will be further impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, 75.9, 75.101, 75.103, 75.104, 75.105.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate substantial revenues. A similar program, implemented in 2004 has generated approximately $17 million to date. It is difficult to supply an exact amount due to the fluctuation in cost of a NOx allowance, and further depends on need by the electric generating utility sector.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will bring substantial revenues to the state, although it is impossible to state a specific amount since the cost of NOx allowances fluctuate on a routine basis. Additionally, the cost per allowance is market driven depending on the need of the allowances available for purchase.

(c) How much will it cost to administer this program for the first year? The Division’s operating budget continues as the source of funding for the implementation of this program. No additional personnel or resources should be needed to implement this program, because the existing program to sell allowances will end when this one begins.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will have no effect on costs for administering the program in subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department For Environmental Protection
Division for Air Quality
(New Administrative Regulation)

401 KAR 51:220. CAIR NOx ozone season trading program.

RELATES TO: KRS 224.10-100, 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), 42 U.S.C. 7410

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. 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 Clean Air Interstate Rule (CAIR), 40 C.F.R. 98.301 to 98.376. This administrative regulation is not more stringent than the provisions allowed under the federal mandate.

Section 1. Applicability. This administrative regulation shall apply to:
(1) CAIR NOx Ozone Season units in Kentucky that are subject to 40 C.F.R. 96.304; or
(2) A fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMMBtu per hour or more that was previously allocated NOx allowances pursuant to 401 KAR 51:160.

Section 2. CAIR NOx Ozone Season units shall comply with the following requirements:
(1) 40 C.F.R. 96.301 to 96.308 (Subpart AAAAA), "CAIR NOx Ozone Season Trading Program General Provisions";
(2) 40 C.F.R. 96.310 to 96.314 (Subpart BBBBB), "CAIR Designated Representative for CAIR NOx Ozone Sources";
(3) 40 C.F.R. 96.320 to 96.324 (Subpart CCCCC), "Permits";
(4) 40 C.F.R. 96.350 to 96.357 (Subpart FFFFF), "CAIR NOx Ozone Season Allowance Tracking System";
(5) 40 C.F.R. 96.360 to 96.362 (Subpart GGGG), "CAIR NOx Ozone Season Allowance Transfers"; and
(6) 40 C.F.R. 96.370 to 96.376 (Subpart HHHH), "Monitoring and Reporting".

Section 3. Methodology for the Allocation of CAIR NOx Ozone Season Allowances. The number of CAIR NOx Ozone Season allowances to be allocated to each CAIR NOx Ozone Season 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 CAIR NOx Ozone Season allowances shall be the number of CAIR NOx Ozone Season allowances assigned to Kentucky by the U.S. EPA and approved in Kentucky's State Implementation Plan (SIP).

(2) The total number of CAIR NOx Ozone Season allowances assigned to Kentucky shall be divided into separate pools as follows:
(a) The number of CAIR NOx Ozone Season allowances specified in Kentucky's approved SIP for CAIR NOx Ozone Season units specified in Section 1(1) of this administrative regulation with:
   1. Ninety-eight (98) percent of this amount allocated for each control period to units that commence commercial operation before:
      b. January 1, 2009, for the 2015 control period; and
      c. Thereafter, before January 1 of the year that is six (6) years before the next control period; and
   2. Two (2) percent of this amount for each control period sold by the Commonwealth of Kentucky with the proceeds deposited Into Kentucky's general fund; and
(b) The number of CAIR NOx Ozone Season allowances specified in Kentucky's approved SIP for CAIR NOx Ozone Season units specified in Section 3(1) of this administrative regulation:
(3) For each CAIR NOx Ozone Season unit, the baseline heat input in MMMBtu shall be determined and shall be used to determine CAIR NOx Ozone Season allowances for the pools specified in subsection (2)(a)1 and subsection (2)(b) of this section as follows:
(e) For CAIR NOx Ozone Season units commencing operation before January 1, 2001, and:
   1. Operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for 2001 through 2005;
   2. Not previously operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for the five (5) consecutive years of operation;
(b) For CAIR NOx Ozone Season units commencing operation on or after January 1, 2001, and operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three highest amounts of the unit's adjusted control period heat input over the consecutive five (5) years of operation;
(c) For CAIR NOx Ozone Season units that have not operated each calendar year during a period of five (5) or more consecutive years, the average of the three highest amounts of the unit's adjusted control period heat input for the previous five (5) years of operation, where the:
   1. Unit shall not establish a baseline heat input;
   2. Adjusted control period heat input for a control period of not operating shall equal zero;
   3. Cabinet shall allocate CAIR NOx Ozone Season allowances for the unit.

(4) The adjusted control period heat input for each ozone season shall be calculated as follows for CAIR NOx Ozone Season units specified in subsection (2)(a) of this section:
(a) If the unit is coal-fired during the year, the unit's control period heat input for that year shall be multiplied by 100 percent;
(b) If the unit is oil-fired during the year, the unit's control period heat input for that year shall be multiplied by sixty (60) percent; and
c) If the unit is not subject to paragraphs (a) or (b) of this subsection, the unit’s control period heat input for that year shall be multiplied by forty (40) percent; and

(5) The adjusted control heat input for CAIR NOx Ozone Season units specified in subsection (2)(b) of this section shall equal the unit’s control period heat input multiplied by one hundred percent.

(6) For an ozone season, the unit’s control period heat input and the unit’s status as coal-fired or oil-fired shall be determined:

(a) In accordance with 40 C.F.R. Part 75, if the unit is subject to 40 C.F.R. Part 75;

(b) By 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; or

(c) By the best available data obtained by the cabinet.

(7) For CAIR NOx Ozone Season units included in the pool specified in subsection (2)(a) of this section, the cabinet shall allocate CAIR NOx Ozone Season allowances to each CAIR NOx Ozone Season unit in an amount equal to the result obtained by:

(a) Multiplying the total amount of CAIR NOx Ozone Season allowances specified in subsection (2)(a) of this section by the baseline heat input for each unit and the heat input established under subsection (3)(c) of this section;

(b) Dividing by the total amount of baseline heat input and the heat input established under subsection (3)(c) of this section for all applicable CAIR NOx Ozone Season units; and

(c) Rounding to the nearest whole CAIR NOx Ozone Season allowance, as appropriate.

(8) For CAIR NOx Ozone Season units included in the pool specified in subsection (2)(b) of this section, the cabinet shall allocate CAIR NOx Ozone Season allowances to each CAIR NOx Ozone Season unit in an amount equal to the result obtained by:

(a) Multiplying the total amount of CAIR NOx Ozone Season allowances specified in subsection (2)(b) of this section by the baseline heat input for each unit and the heat input established under subsection (3)(c) of this section;

(b) Dividing by the total amount of baseline heat input and the heat input established under subsection (3)(c) of this section for all applicable units specified in subsection (2)(b) of this section; and

(c) Rounding to the nearest whole CAIR NOx Ozone Season allowance, as appropriate.

(9) The cabinet shall submit to the U.S. EPA the CAIR NOx Ozone Season allowance to be allocated and sold from the pools specified in subsection (2) of this section in a format prescribed by the U.S. EPA:


(b) October 31, 2009, for control period 2015; and

(c) October 31 of each year thereafter, for the control period in the sixth year after the year of the applicable deadline for submission.

Section 4. CAIR NOx Ozone Season Allowance Tracking System.

(1) The Commonwealth of Kentucky shall establish an account pursuant to 40 C.F.R. 96.351(b) for the purpose of selling the CAIR NOx Ozone Season allowances in the pool specified in Section 3(2)(a) of this administrative regulation. The proceeds from the sale of the CAIR NOx Ozone Season allowances shall be deposited in the general fund of the Commonwealth of Kentucky.

(2) A CAIR NOx Ozone Season unit shall comply with the CAIR NOx Ozone Season Allowance Tracking System requirements established in 40 C.F.R. 96.351 to 96.357.

JOHN W. CLAY, Deputy Secretary
For LulaJuan S. Wilcher, Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2006, at 10 a.m. LT 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 working days prior to the hearing, of their intent to attend. 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. 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. If you request a transcript, you will be required to pay for the transcript. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulatation. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the hearing or written comments on the proposed administrative regulation to:

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:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the control of nitrogen oxides (NOx) emissions from any electric generating unit or industrial boiler that is subject to the provisions of the Clean Air Interstate Rule (CAIR) NOx Ozone Season Trading Program, 40 C.F.R. 96.301 to 96.376. This administrative regulation will assist in mitigating interstate transport of NOx emissions.

(b) The necessity of this administrative regulation: The U.S. EPA is requiring 28 states and the District of Columbia to revise their State Implementation Plans (SIPs) to include control measures to reduce emissions of nitrogen oxides. NOx is a precursor to ozone. Reducing the emissions of NOx will assist 8-hour ozone nonattainment areas in achieving the national ambient air quality standard.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-101(b) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation is proposed to reduce NOx emissions from electric generating units or industrial boilers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will reduce NOx emissions resulting in the protection of human health and the environment.

(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 administrative regulation does not amend any existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation does not amend any existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation does not amend any existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation does not amend any existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The owners and operators, along with a designated representative, of electric generating units or industrial boilers will be subject to this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Each affected electric generating unit will have to possess allocations sufficient to cover their emissions. In the absence of these allocations, the affected electric generating unit will have to purchase allocations from the CAIR NOx Annual Trading Program for excess emissions of NOx.

(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in question (3): The cost is an unknown entity.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The public will benefit from this administrative regulation.
(3) 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 administrative regulation.
(b) On a continuing basis: There will not be any continuing costs for the implementation of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement the proposed administrative regulation.
(8) State whether or not the administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish, nor does it directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Yes. This administrative regulation applies to electric generating units producing more than 25 MWe for sale.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 C.F.R. 96.301 to 96.376 as published at 70 Fed. Reg. 25162 (May 12, 2005).
2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 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 revise their State Implementation Plan to reduce the emissions of nitrogen oxides. The federal regulation contains model rules for multistate cap and trade programs for NOx emissions. The model rules provide states the ability to meet the required emissions reductions in a flexible and cost-effective manner. Each affected electric generating unit or industrial boiler will have to possess allocations for the tons of emissions of NOx for each control period. In the absence of the required allocations, the affected electric generating unit or industrial boiler will have to purchase allocations from the CAIR NOx Ozona Season Trading Program for excess emissions of NOx. Each electric generating unit or industrial boiler will have flexibility in controlling NOx emissions from the state government (including cities, counties, fire departments, or school districts).
1. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation follows the federal regulation model rule and will impose no more stringent requirements than those required by the federal mandate.
2. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements, than those required by the federal mandate? None.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No known units, parts or divisions of state or local government will be impacted by this regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, and 42 U.S.C. 7410.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues. The proposed regulation would not affect revenues.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues. The proposed regulation would not affect revenues.
(c) How much will it cost to administer this program for the first year? The division's operating budget continues as the source of funding for the implementation of this program.
(d) How much will it cost to administer this program for subsequent years? The proposed regulation will have no effect on costs for administering the program in subsequent years.

Note: if specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department For Environmental Protection
Division for Air Quality
(New Administrative Regulation)

401 KAR 51:230. CAIR NOx trading program.
RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 51.124, 51.125, 73, 74, 77, 78, Part 96, 42 U.S.C. 7410

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. This administrative regulation establishes the provisions of the CAIR NOx Trading Program as codified at 40 C.F.R. 96.201 to 96.288 for applicable sources located in the Commonwealth of Kentucky.

Section 1. Applicability. This administrative regulation shall apply to CAIR SO2 sources and CAIR SO2 units under the CAIR SO2 Trading Program located in Kentucky that are subject to 40 C.F.R. 96.204.

Section 2. Compliance requirements. CAIR SO2 sources and CAIR SO2 units shall comply with the following requirements:
1. 40 C.F.R. 96.201 to 96.208 (Subpart AAA), *CAIR SO2 Trading Program General Provisions;
2. 40 C.F.R. 96.210 to 96.214 (Subpart BBB), *CAIR Designated Representative for CAIR SO2 Sources;
3. 40 C.F.R. 96.220 to 96.224 (Subpart CCC), *Permits;
4. 40 C.F.R. 96.250 to 96.257 (Subpart FFF), *CAIR SO2 Allowance Tracking System;
5. 40 C.F.R. 96.260 to 96.262 (Subpart GGG), *CAIR SO2 Allowance Transfers;
6. 40 C.F.R. 96.270 to 96.276 (Subpart HHH), *Monitoring and Reporting; and
7. 40 C.F.R. 96.280 to 96.288 (Subpart III), *CAIR SO2 Opt-in Units.

JOHN W. CLAY, Deputy Secretary
For LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: August 14, 2006
FILED WITH AGENCY: August 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2006, at 10 a.m. LT 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. 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. 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 hearing will be made. If you request a transcript, you will be required to pay for the transcript. 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 2, 2006. Send written notification of intent to be heard at the hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-5382, 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:
(a) What this administrative regulation does: This administrative regulation establishes the provisions of the Clean Air Interstate Rule (CAIR) SO2 Trading Program, 40 C.F.R. 96.201 to 96.288, for applicable sources in Kentucky. This administrative regulation will assist in mitigating interstate transport of SO2 emissions.
(b) The necessity of this administrative regulation: The U.S. EPA is requiring 28 states and the District of Columbia to revise their Implementation Plans (SIPs) to include control measures to reduce emissions of sulfur dioxide. Reducing the emissions of SO2 will assist areas in achieving national ambient air quality standards.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation is proposed to reduce SO2 emissions.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will reduce SO2 emissions resulting in the protection of human health and the environment.
(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 administrative regulation does not amend any existing administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation does not amend any existing administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation does not amend any existing administrative regulation.
(d) How the amendment will assist in the effective administration of statutes: This administrative regulation does not amend any existing administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MW producing electricity for sale.
(4) Provide a discussion of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Each affected CAIR SO2 unit will have to possess allocations sufficient to cover their emissions for each control period.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost is an unknown entity.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The public will benefit from this administrative regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The cabinet will incur no additional costs for the implementation of this administrative regulation.
(b) On a continuing basis: There will be no continuing costs for the implementation of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement the proposed administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly affects any fees. This administrative regulation does not establish, nor does it directly or indirectly affect any fees.
(9) TIERING: Is tiering applied? Yes. This administrative regulation applies to fossil-fuel-fired electric generating units producing more than 25 MW for sale.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 C.F.R. 96.201 to 96.288 as published at 70 Fed. Reg. 34612 (July 13, 2005).
2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 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 revise their State Implementation Plan to reduce the emissions of sulfur dioxide. This administrative regulation follows the established federal standards for the CAIR SO2 Trading Program.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation follows the federal regulation provisions and will impose no more stringent requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No known units, parts or divisions of state or local government will be impacted by this regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 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.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues. The proposed regulation would not affect revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues. The proposed regulation would not affect revenues.

(c) How much will it cost to administer this program for the first year? The division’s operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will have no effect on costs for administering the program in subsequent years. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/−): There is no known effect on revenues.

Expenditures (+/−): There is no known effect on expenditures.

Other Explanation: There is no further explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
Treatment Program for Juveniles with Sexual Behavior Problems and Offenses
(New Administrative Regulation)


RELATES TO: KRS 15A.065, 15A.067, 200 080-120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200 115, 605.150, 635.095, 635.100(7), KRS 635.520, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, 635.520, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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

(a) "Department of Juvenile Justice Policy and Procedures Manual: Treatment Program for Juveniles with Sexual Behavior Problems and Offenses", August 15, 2005, which includes the following:

800 Treatment Program for Juveniles with Sexual Behavior Problems and Offenses (08/15/07)
801 Intake and Assessment (09/15/06)
802 Sex Offender Specific Treatment Protocol (06/15/06)
803 Polygraph Examination (08/15/06)
804 Juvenile Sexual Offender Registry (08/15/06)
805 Youthful Offenders (08/15/06)
806 Juvenile Sex Offender Treatment and Assessment Protocols (06/15/06)

(b) The "Treatment Program for Juveniles with Sexual Behavior Problems and Offenses", (08/15/06).

(c) The "Estimate of Risk of Adolescent Sex Offense Recidivism (ERASOR)", (08/15/06).

(d) The "Juvenile Sex Offender Assessment Protocol (J-SOAP)", (08/15/06).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

BRIDGET SKAGGS BROWN, Commissioner
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 15, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2006, at 9 a.m., at Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within 5 days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. A transcript of this 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 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees, treatment providers, and the residential and community population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 635.515, and 635.520 and to specifically provide a treatment protocol for youth with sexual behavior problems and offenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the sexual offender treatment protocol of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise sexual offender treatment protocol to the Department of Juvenile Justice employees, treatment providers, and the residential and community population as to their duties, rights, privileges, and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment will provide a uniform written sexual offender treatment protocol for all youth committed to the Department of Juvenile Justice for sexual offenses, and reflect the treatment and practice of the agency.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of HB3 2006 GA, KRS 15A.065 and 15A.067.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or her authorized representative to implement or amend practices, procedures, and a specific sex offender treatment protocol to ensure the safe and efficient operation of the Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the Department of Juvenile Justice to treat sexual offenders more efficiently and uniformly.

(3) List type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 youth annually, 3 treatment providers, and 21 DJJ 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 it if it is an amendment: By providing and implementing a clear and concise sexual offender treatment protocol for the Department of Juvenile Justice employees, treatment providers, and the residential and community population...
populations, the sexual offender program will be managed more effectively and will result in higher outcome measures.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The youth who are sent to the program for treatment will be provided with specific information regarding every aspect of the required treatment protocol and the steps that shall be expected of them to complete the treatment program. The treatment providers and the DJJ employees who will provide assessments and the treatment protocol shall follow the treatment protocol as outlined in the regulation and the materials incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (5)? In complying with this administrative regulation, no monetary costs will incurred by the youth, the treatment providers, or the DJJ employees. All costs of implementation of this treatment protocol will be paid out of budgetary monies by the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Young who are sent to the treatment program shall be more effective and consistently served. The treatment providers and the DJJ employees who administer the assessments and the treatment protocol shall provide a standardized protocol that will produce consistent outcome measures.

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

(a) Initially: $750,000 per annum.

(b) On a continuing basic: $750,300 per annum.

6. What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Funds budgeted for DJJ Mental Health this 2006-2008 biennium.

7. Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.

9. Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire department, or school districts) will be impacted by the regulation? The Department of Juvenile Justice, within the Justice and Public Safety Cabinet, is the only government entity impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire department, or school districts) for the next fiscal year. The administrative regulation will establish a written treatment protocol that will be implemented in the treatment program of juvenile sexual offenders. The anticipated effect will be improved outcome measures in the treatment of juvenile sex offenders.

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

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

(c) How much will it cost to administer this program for the first year? The proposed administrative regulation will not affect the current budget, but will require reallocation of funds and will use existing staff and facilities to implement.

(d) How much will it cost to administer this program for subsequent years? As the courts deal with juvenile offenders and the number of youth who are committed to the Department of Juvenile Justice for sexual offenses changes, the cost to administer the program in subsequent years may vary. However, at present, the proposed administrative regulation will not affect the current budget, but will require reallocation of funds and will use existing staff and facilities to implement.

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

Revenues (+/-): Expenditures (+/-):

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care (Repealer)

806 KAR 17:021. Repeal of 806 KAR 17:110, 806 KAR 17:120, and 806 KAR 17:205.

RELATES TO: KRS 13A.310, 216.2960, 304.174-071
STATUTORY AUTHORITY: KRS 13A.310, 304.2-2-110(1)
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 806 KAR 17:110, 806 KAR 17:120, and 806 KAR 17:205, which are no longer necessary "as an aid to the effectuation of any provision of this code" as stated in KRS 304 2-110(1). 806 KAR 17:110 and 806 KAR 17:120 set forth requirements relating to the Kentucky Health Purchasing Alliance, a program that ended in 1999. 806 KAR 17:205 establishes high-cost condition codes and the method for scoring the severity of the condition, which is no longer necessary, since the GA repealed the Guaranteed Acceptance Program (GAP) in 2000, and the Office of Insurance can no longer quality new individuals or insurers for this program. This administrative regulation will repeal outdated and unnecessary administrative regulations.

Section 1. The following administrative regulations are hereby repealed:

(1) 806 KAR 17:110, Establishment of the Kentucky Risk Assessment and Risk Adjustment System;

(2) 806 KAR 17:120, Accountable health plan certification; and

(3) 806 KAR 17:205, High-cost condition codes and severity questionnaire.

JOHN W. CLAY, Deputy Secretary
For LAUANNA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
JULIE MIX MCPEAK, Executive Director
APPROVED BY AGENCY: August 10, 2006
FILED WITH LFC: August 11, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2006, at 9 a.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2006, 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 com-
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Regulatory Impact Analysis and Tiering Statement

Contact Person: Melea Rivera

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 17:110, 17:120, and 17:205.
(b) The necessity of this administrative regulation: This administrative regulation will repeal 3 administrative regulations contained in 806 KAR Chapter 17 that are outdated and unnecessary to the regulation of insurance.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 13A.330 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. 806 KAR 17:205 relates to eligibility for participation in the Guaranteed Acceptance Program (GAP) which is being wound down after implementation of the state's high-risk pool. Additionally, several of the relating GAP statutes have been repealed. Less than 200 individuals remain in the GAP program. 806 KAR 17:110 and 17:120 relate to the Health Purchasing Alliance, which is a program that was discontinued in 1999. The statutes relating to the Health Purchasing Alliance became "null and void" pursuant to KRS 304.17A-071 on July 1, 1999. These regulations are no longer necessary and the Office of Insurance wishes to repeal these administrative regulations.
(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.

(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 is not an amendment.
(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 types and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Since several of the authorizing statutes are already repealed and no new individuals or insurers may qualify for these programs, no entities should be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Insurers will not be required to take any action as a result of the promulgation of this repealer administrative regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurers will not incur any costs as a result of the promulgation of this repealer administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This repealer administrative regulation does not require compliance on the part of insurers.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal, if any, for the Office of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Office of Insurance.

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

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

(9) Tiering: Is tiering applied? No, tiering does not apply, since this administrative regulation repeals three (3) regulations contained in 806 KAR Chapter 17.

Fiscal Note on State or Local Government

1. Does this administrative regulation relate to any program, service, or requirement of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Office of Insurance.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Codes, as defined by KRS 304.1-010. 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.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue for state government will be generated as a result of this administrative regulation.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue for state government will be generated as a result of this administrative regulation.
(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation on an initial basis are believed to be minimal, if any, for the Office of Insurance.
(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation are believed to be minimal, if any, for the Office of Insurance.

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

Revenues (+/-): 
Expenditures (+/-):
Other Explanation:

- 1025 -
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(Repealer)

RELATES TO: KRS 13A.310, 304.18-050
STATUTORY AUTHORITY: KRS 13A.310, 304.2-110(1)
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 will repeal 806 KAR 18:060, which relates to the filing requirements for associations. KRS 304.18-050 was amended to delete the association filing requirements.

Section 1. 806 KAR 18:060, Filing requirements for associations, is hereby repealed.

JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILGHER, Secretary
CHRISTOPHER LILLY, Commissioner
JULIE MIX MCEPAK, Executive Director
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on the proposed administrative regulation shall be held on September 21, 2006, at 9 a.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

Contact Person: Melea Rivera, Health Insurance Policy and Managed Care Division, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 18:060.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 806 KAR 18:060, which is outdated and unnecessary to the regulation of insurance.

(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. 806 KAR 18:060, which relates to the filing requirements for associations is no longer necessary because KRS 304.18-050 was amended to delete the association filing requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will remove an administrative regulation that is no longer necessary.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation? This administrative regulation does not amend an existing administrative regulation.
(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: Since KRS 304.18-050 was amended in 1998 to delete the filing requirements for associations no associations have submitted filings to comply with these requirements. Therefore, no entities will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Insurers will not be required to take any action as a result of the promulgation of this repealer administrative regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurers will not incur any costs as a result of the promulgation of this repealer administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This repealer administrative regulation does not require compliance on the part of insurers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially Costs of implementing this administrative regulation on an initial basis are believed to be minimal, if any, for the Office of Insurance.
(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal, if any, for the Office of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Office of Insurance.

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

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

(9) TIERING. Is tiering applied? Tiering was not applied, since this administrative regulation repeals an administrative regulation contained in 806 KAR Chapter 18.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 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.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for
the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue for state government will be generated as a result of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation on an initial basis are believed to be minimal, if any, for the Office of Insurance.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation are believed to be minimal, if any, for the Office of Insurance.

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

Revenues (+/-): Expenditures (+/-): Other Explanation:

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


RELATES TO: KRS 230.215(1), 230.260(1)
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)
NECESSITY, FUNCTION AND CONFORMITY: KRS 230.215(2) grants the Kentucky Horse Racing Authority "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) grants the Authority "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted..." This administrative regulation repeals 811 KAR 1:165, 811 KAR 1:170, 811 KAR 1:180, and 811 KAR 1:190, which are now either obsolete or else duplicated in other regulations.

Section 1. The following administrative regulations are hereby repealed:
1. 811 KAR 1:165, Driver's stand;
2. 811 KAR 1:170, Telephones;
3. 811 KAR 1:180, Personnel to be licensed, fees; and
4. 811 KAR 1:190, Matters not covered by rules; violations.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 27, 2006, at 11 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 the Kentucky Horse Racing Authority in writing by Wednesday, September 20th, 2006, 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. 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 Monday, October 2, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: P. J. Cooksey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation repeals several regulations with obsolete language or language that has been moved to other regulations.
(b) The necessity of this administrative regulation: This repealer regulation is necessary to streamline and consolidate the rules governing harness racing.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administration regulation ensures that horse races are governed by a consistent and effective body of rules by eliminating outdated rules.
(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: 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: No effect; outdated language is eliminated or shift to another portion of the regulations.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions required to comply.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A
(9) TIERING: Is tiering applied? N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government
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(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
   (c) How much will it cost to administer this program for the first year?
   (d) How much will it cost to administer this program for subsequent years?
   Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
   Revenues (+/-):
   Expenditures (+/-):
   Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Human Support Services
Division of Aging Services
(New Administrative Regulation)

910 KAR 1:250. Kentucky Family Caregiver Program.

RELATES TO: KRS 199.011(4), 205.455(4), 42 U.S.C. 601, 651, 1381, 3030s, 3030s-1
STATUTORY AUTHORITY: KRS 194A.050(1), 2006 Ky. Acts ch. 252
NECESSITY, FUNCTION, AND CONFORMITY: 2006 Ky. Acts ch. 252 requires the cabinet to implement the Kentucky Family Caregiver Program providing assistance, including grants or vouchers, to grandparents who are primary caregivers of their grandchildren. KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate programs and fulfill the responsibilities vested in the cabinet. This administrative regulation establishes the Kentucky Family Caregiver Program.

Section 1. Definitions. (1) "Child" is defined by KRS 199.011(4).
   (2) "District" is defined by KRS 205.455(4).
   (3) "Federal poverty level" means the degree to which a household's gross income matches the official poverty income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services.
   (4) "Grant" means a payment to a grandparent for services specified in Section 8(3)(a) or 9 of this administrative regulation and based on:
      (a) Need, and
      (b) Actual cost.
   (5) "Household" means an individual or group of individuals who are living together in a principal residence as one (1) economic unit.
   (6) "Household Income" means all annual gross earned and unearned income received by a household, including a:
      (a) Lump sum payment; or
      (b) State or federal benefit assistance payment.
   (7) "Local resolution" means a phone conversation or meeting between a grandparent and district to resolve the grandparent's dispute against denial of eligibility.
   (8) "National Family Caregiver Support Program" is defined by 42 U.S.C. 3030s.
   (9) "Respite assistance" means care provided by a caregiver or agency approved by a district:
      (a) For a designated time period; and
      (b) To temporarily relieve a grandparent who serves as primary caregiver to a grandchild.
   (10) "Supplemental services" means the services that a grandparent may receive in accordance with Section 9 of this administrative regulation through application and grant or voucher process.
   (11) "Support services" means the services that a grandparent may receive in accordance with Section 8 of this administrative regulation through application and grant or voucher process.
   (12) "Voucher" means a payment made directly to a vendor for the services specified in Section 8(3)(a) and 9 of this administrative regulation.

Section 2. Eligibility. (1) To be eligible for the Kentucky Family Caregiver Program, a grandparent shall:
   (a) Be a Kentucky resident;
   (b) Be the primary caregiver for a grandchild;
   (c) Be related to the grandchild by:
      1. Birth;
      2. Marriage; or
      3. Adoption, if adoption occurs through the parent;
   (d) Reside with the grandchild who:
      1. Shall not be residing in the same household with the grandchild's parent or
      2. May reside in a house owned by the grandchild's parent;
   (e) Not receive a monthly payment for Kinship Care in accordance with 922 KAR 1:030; and
   (f) Not have annual household income that exceeds 150 percent of federal poverty level.

Section 3. Application. A grandparent shall apply or reapply for the Kentucky Family Caregiver Program each fiscal year:
   (1) Through a local district of residence; and
   (2) By signing an "Application for Kentucky Family Caregiver Services".

Section 4. Distinct Responsibilities. A district shall:
   (1) Complete an assessment to include at a minimum of the following:
      (a) Demographic information;
      (b) Establishment of eligibility relationship between grandparent and grandchild;
      (c) Documentation of annual household income;
         1. With a federal tax form;
         2. W2;
         3. Pay stub; or
         4. Other documentation of monthly income;
      (d) Living arrangements of household;
      (e) Residency;
      (f) Physical health of the grandparent and grandchild;
      (g) Physical environment;
      (h) Mental and emotional status of the grandparent; and
      (j) Identification of a grandparent's problem or need by using a "Kentucky Family Caregiver Program Plan of Care" including:
         1. Counseling in accordance with Section 8(3)(a) of this admin-
Section 8. Support Services. Support services shall include:
(1) Information about available services,
(2) Assistance in gaining access to services; and
(3) Assistance to the grandparent in decision-making and problem-solving relating to a caregiving role including:
(a) Individual counseling;
(b) Organization of a support group; and
(c) Caregiver training.

Section 9. Supplemental Services. Supplemental services related to the child shall include:
(1) Child clothing;
(2) Respite assistance for the grandparent;
(3) Educational supplies or assistance;
(4) Required legal services, excluding unlawful activity;
(5) Medical and dental services, except for copays and premiums; and
(6) Other services for a grandchild authorized by the district.

Section 10. Grandparent Responsibilities. A grandparent shall:
(1) Provide a district with the information specified in Section 2(1) of this administrative regulation,
(2) Comply with a district's assessment process as established in Section 4(1) of this administrative regulation;
(3) Comply with the district's policies for expenditures of assistance, including a grant or voucher;
(4) Comply with appeal procedures of Section 11 of this administrative regulation; and
(5) Notify the district immediately of a change in status that is in noncompliance with the eligibility requirements specified in Section 2(1) of this administrative regulation.

Section 11. Appeal Procedures. (1) If eligibility for services is denied, a district shall inform the applicant by written notice:
(a) As specified in Section 2(3) of this administrative regulation; and
(b) Accompany the notice with a "Request for Hearing, Local Resolution".
(2) An applicant may complete and file the "Request for Hearing, Local Resolution" within thirty (30) days after receipt of the written notice for denial of eligibility.
(3) If the notice is mailed, the date of the notice shall be the date mailed; otherwise it shall be the date of delivery.
(4) Upon receipt of the "Request for Hearing, Local Resolution", the district shall:
(a) Review; and
(b) If requested, schedule a local resolution with the applicant.
(5) The local resolution shall be:
(a) Held with the applicant within ten (10) days of receipt of the request; and
(b) Conducted by a district regional manager or designee.
(5) If within five (5) days of completion of the local resolution, the district regional manager or designee shall:
(a) Issue a decision by written notification to the return address specified on the "Request for Hearing, Local Resolution"; and
(b) Specify whether denied eligibility is rescinded.
(6) If an applicant requests a hearing, the district shall submit to the Families and Children Administrative Hearings Branch the "Request for Hearing, Local Resolution", and results of a local resolution, if any:
(a) At 275 East Main Street, HS1-ED, Frankfort, Kentucky 40621; and
(b) Within ten (10) days of receipt.
(7) The Hearings Branch shall:
(a) Appoint a hearing officer; and
(b) Proceed pursuant to KRS 13B.050.
(6) A hearing shall be held at a grandparent's local district of residence.
(9) The hearing officer shall issue a recommended order pursuant to KRS 13B.110(1).
(10) After a hearing, the cabinet shall collect exceptions to recommended orders;
(11) A final order shall be issued pursuant to KRS 13B 120.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Kentucky Family Caregiver Services", edition 11/08;
(b) "Kentucky Family Caregiver Program Plan of Care", edition 11/08; and
(c) "Request for Hearing, Local Resolution", edition 11/06.
(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. 910 KAR 1:260

MARK BIRDWHISTELL, Secretary
MARLA MONTELL, Commissioner
BILL COOPER, Director
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 14, 2006 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2006, 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 September 14, 2006, 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 2, 2006. 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-8, 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) What this administrative regulation does: This administrative regulation establishes standards and policies for the Kentucky Family Caregiver Program.

(b) The necessity of this administrative regulation: This administrative regulation sets forth policies for operation of the Kentucky Family Caregiver in compliance with the legislative intent of HB 300 2006 GA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to 2006 Ky. Acts ch. 252 by providing assistance, including grants or vouchers to grandparents who are primary caregivers of their grandchildren.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines standards and policies to implement the Kentucky Family Caregiver Program. In accordance with 2006 Ky. Acts ch. 252, grandparents who are primary caregivers for their grandchildren will receive up to $750 in grants or vouchers per grandchild to be utilized for: 1) child clothing, 2) respite assistance, 3) educational supplies or assistance, 4) required legal services, 5) medical and dental services, and 6) other expenses that the cabinet authorizes for the grandchild.

(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 is not an amendment to an existing administrative regulation, but is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Refer to (2)(a).

(c) How the amendment conforms to the content of the authorizing statutes: Refer to (2)(a).

(d) How the amendment will assist in the effective administration of the statutes: Refer to (2)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities include an estimated 69,504 grandparents who are primary caregivers for and living with their grandchildren, and 22,000 grandparents at 150% of poverty level. Vendors willing to bill a district for services or goods that grandparents purchase, the fifteen (15) Area Development Districts throughout the state and the Division of Aging Services will be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Grandparents will apply or reapply each fiscal year for assistance for support and supplemental services at their local district, complete the required policies for expenditures of grants or vouchers, and notify the district of a change in status that is in noncompliance with eligibility requirements. If in agreement, vendors will allow grandparents to purchase 1) child clothing, 2) respite assistance, 3) educational supplies or assistance, 4) required legal services, 5) medical and dental services, and 6) other expenses that the cabinet authorizes for the grandchild.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There will be no cost to the grandparent or vendor. Refer to (5)(a) for cost to districts and the Division of Aging Services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Grandparents will benefit by receiving additional assistance to purchase services or goods to better care for their grandchildren. In addition, grandparents will benefit by receiving information about available services, assistance in gaining access to services, assistance in decision-making and problem-solving relating to caregiving roles including: 1) individual counseling, 2) organization of support groups; and 3) caregiver training. Vendors will acquire additional business that they may not have otherwise acquired. Districts and the Division of Aging Services will be able to serve more grandparents who are primary caregivers for their grandchildren.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: $80,000 estimated administrative costs. Because there were no administrative costs allocated in HB 360 to administer this program, the department anticipates that it will be able to absorb costs within its existing budget.

(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: HB 300 2006 GA included in the General Fund $1,250,000 in fiscal year 2006-2007 and $2,000,000 in fiscal year 2007-2008 to expand the Kentucky Family Caregiver Program.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, since implementation of the Kentucky Family Caregiver Program is the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

(a) How much revenue will this administrative regulation gener-
ate for the state or local government (including cities, counties,
fire departments, or school districts) for the first year? This new
administrative regulation will generate no revenue for state or local
government.

(b) How much revenue will this administrative regulation gener-
ate for the state or local government (including cities, counties,
fire departments, or school districts) for subsequent years? This
new administrative regulation will generate no revenue for state or local
government.

(c) How much will it cost to administer this program for the first
year? $80,000 estimated administrative costs. Because there were
no administrative costs allocated in HB 380 to administer this pro-
gram, the department anticipates that it will be able to absorb costs
within its existing budget.

(d) How much will it cost to administer this program for subse-
quent years? Same as (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:
The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 8, 2006, at 10:00 a.m., in Room 121 of the Capitol Annex. Senator Richard "Dick" Roeding called the meeting to order, and the roll call was taken. The minutes of the July 11, 2006 meeting were approved.

Present were:
- Members: Senator Richard "Dick" Roeding, Co-Chair; Senators Alice Kerr, Joey Pendleton, and Gary Tapp; Representatives James Bruce, Jimmie Lee, and Jon David Reinhardt.
- LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Karen Howard, Mark Malles, Laura Miliam, Ellen Steinberg, Emily Herkenrider, and Roslyn Hendrickson.
- Guests: Diane Barber, Tim Phelps, Kentucky Higher Education Assistance Authority; Belinda Casey, Brenda Sweett, Treasury; Norma Brown, Lee Harris, Shelly Saffron, Kentucky Real Estate Commission; Janice Campbell, Jayne Carpenter, Junius Carpenter, Karen B. Greenwell, Noel E. Record, Virginia Record, Board of Barrenness; Neil J. Alloto, Diane Fleming, Claude Wagner, Board of Licensure for Private Investigators; Rob Daniel, Bruce Scott, Chris Short, Division of Waste Management; Amy Barker, Department of Corrections; Lieutenant Adam Whitlock, Roger Wright, Kentucky State Police; Kevin Noland, Board of Education; Dr. Robert Tarvin, School Facilities Construction Commission; Carla H. Montgomery, Office of Workers' Claims; David Reichert, Ray Sandbek, Ralph J. Wirth, Board of Home Inspectors; Elizabeth Caywood, Wendy Crompton, David Gayle, Larry Gillis, Linda Hamby, Johann Herklotz, Angela Kirkland, Jay Klein, Stuart Owen, Bobbie Walters, Cabinet for Health and Family Services; Bart Baldwin, Children's Alliance; Maureen Fitzgerald, Heidi Schissler, Protection and Advocacy; and Wayne Campbell.

The Administrative Regulation Review Subcommittee met on Tuesday, August 8, 2006, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Kentucky Loan Program

11 KAR 5:100. Administrative wage garnishment. Diana Barber, assistant general counsel, and Tim Phelps, student aid branch manager, represented the authority.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 4 to correct statutory citations; and (2) to amend Sections 3 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 4:060. Student aid applications. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 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.

11 KAR 5:130. Student application. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 5:140. KTG award determination procedure. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct the punctuation; and (2) to amend Section 1 to cross-reference another administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 5:145. CAP grant award determination procedure. A motion was made and seconded to approve the following amendment: to amend Section 1 to cross-reference another administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 6:010. KEHEAA Work-Study Program. A motion was made and seconded to approve the following amendments: to amend Sections 1 and 6 to correct punctuation. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 8:000. Teacher scholarships. A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 5 to delete language that applied for scholarships issued before 1996; and (2) to amend Sections 2, 5, 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.

11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process. A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 18:010. Robert C. Byrd Honors Scholarship Program. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; and (2) to amend Sections 3 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

DEPARTMENT OF THE TREASURY: State Treasury

20 KAR 1:060 & E. Reports to be filed by holders of unclaimed property. Brenda Sweett, director, and Belinda Casey, branch manager, represented the department.

In response to a question by Senator Roeding, Ms. Sweett stated that the property that was left in the unclaimed property fund remained in the fund.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1 to 4 to a. remove superfluous language; and b. comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Real Estate Commission

201 KAR 11:105. Advertising listed property; advertising public information about specific property; when consent and authorization of owner or principal broker is required. Norman Brown, executive director, Shelly Saffron, director of administration, and Lee Harris, general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amend-
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requirements were approved.

201 KAR 11:220. Errors and omissions insurance requirements. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to differentiate between insurance company certification and private carrier certification of coverage requirements; (2) to delete Section 6, which set forth requirements for agreements between the insurance company and the licensee regarding insurance policy terms that conflicted with KRS 324.395; and (3) to amend Sections 1, 3, 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.

201 KAR 11:250. Listing and purchase contracts and other agreements entered into by licensees; provisions required. In response to a question by Senator Roeding, Ms. Hams stated that the commission informed the brokers and brokerage firms of the proposed changes and did not receive any objections. A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:350. Seller's disclosure of property conditions form. A motion was made and seconded to approve the following amendments: to amend Section 10 to add a new question to the Seller Disclosure of Property Condition Form set forth in this administrative regulation, inquiring whether the property is in a historic district. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:400. Agency disclosure requirements. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to delete superfluous language; (2) to amend Section 3(3) to delete language stating that a broker's revision to the Model Policies shall not constitute a substantive change; and (3) 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.

201 KAR 11:430. Procedure for criminal records background check; disciplinary action against licensees for acts committed before or during the application process. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; (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 Sections 1 and 2 to delete the requirement that an applicant for real estate license provide a credit report, and (4) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Barbering: Board
201 KAR 14:180. License fees, examination fees, renewal fees, and expiration fees. Karen Greenwell, administrator, and Noel Record, board chairperson, represented the board.

In response to a question by Representative Bruce, Ms. Greenwell stated that this administrative regulation established fees for independent contractors, which was a new area of licensure, and did not increase any existing fees.

Kentucky Board of Licensure for Private Investigators: Board
201 KAR 41:020. Application for licensure. Niel Alito, board chairperson, Claude Wagner, director, and Diane Fleming, assistant attorney general, represented the board.

In response to questions by Senator Tapp, Mr. Alito stated that Kentucky's standards for private investigators were higher than some other states since those states did not have licensure requirements. He did not know the number of states that did not require licensure. Kentucky has a reciprocal agreement with Tennessee and is working to establish reciprocal agreements with Ohio, Illinois, and West Virginia.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct the size of the required photograph; (2) to amend Section 3 to change the edition date of the forms; and (3) to amend the forms to remove a reference to KRS 523.020. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 41:050 & E. Renewal and reinstatement procedures. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend Sections 1 to 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 41:070. Continuing professional education requirements. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend Sections 4 and 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 41:080. Complaint procedure. A motion was made and seconded to approve the following amendments: to amend Section 4 to remove language that repeated the statute and to delete Franklin Circuit Court and Insert circuit court as required by statute. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 41:090. Code of ethics. A motion was made and seconded to approve the following amendments: 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.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Environmental Protection: Division of Waste Management: Underground Storage Tanks
401 KAR 42:005. Definitions related to 401 KAR Chapter 42. Bruce Scott, director, Rob Daniel, branch manager, and Chris Short, attorney, represented the department.

In response to questions by Senator Tapp, Mr. Daniel stated that these administrative regulations did not establish provisions more stringent than the federal requirements but merely clarified the requirements. More specifically, the commonwealth has been engaged in the process of streamlining the administrative regulations relating to underground storage tanks (USTs) in 2004. The department has merged twenty-six administrative regulations into nineteen and streamlined the process, making it less combative and more cost effective.

In response to questions by Representative Reinhardt, Mr. Daniel stated that the underground storage tank program regulated petroleum tanks and tanks that contained antifreeze or other hazardous substances, but the program did not regulate fuel oil tanks for residential use. Under federal requirements, a tank was required to be closed if there was a leak, the tank system was not upgraded to current standards, or the system was taken out of service for more than twelve months. The department has worked to educate owners and operators about the existence of the small owner tank removal account fund, which covered tank removal costs for owners or operators with total income less than $50,000 a year. Since 1990, existing small owner tanks were statutorily required to be registered by July 15, 2006, to be eligible for reimbursement from the fund for their removal. Mr. Scott stated that it was not possible to know the number of tanks not registered under the program. Currently, there were $240 million worth of projects registered and
eligible for reimbursement from the fund.

In response to questions by Representative Lee, Mr. Daniel stated that the department allowed abandoned tanks to be registered if the tanks were located at the site of an active investigation or facility cleanup since those abandoned tanks were included in the area of the release from a registered tank. Before a tank could be removed, the statute required notification be given to a department inspector. The majority of tank removals moved forward without having an inspector present, due to budgetary and personnel constraints.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42.011. Scope of Underground Storage Tank Program. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the application of federal regulations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42.020. UST Systems: design, construction, installation, and registration. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the application of federal regulations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 4, 6, 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.

401 KAR 42.030. General operating requirements. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the application of federal regulations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42.040. UST system release detection. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the application of federal regulations, and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42.050. UST system release reporting, investigation, and confirmation. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the application of federal regulations; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42.060. UST system release response and corrective action for UST systems containing petroleum or hazardous substances. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the application of federal regulations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 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.

401 KAR 42.070. Out-of-service UST systems, temporary closure and permanent closure of UST systems, and change in service of UST systems. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the application of federal regulations; (2) to amend Section 3 to specify standards for an extension of the twelve month temporary closure period; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 6, 8, and 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42.072. Repealer of 401 KAR 42.071, 401 KAR 42.260, 401 KAR 42.270, 401 KAR 42.280, and 401 KAR 42.310.

401 KAR 42.080. Classification of UST systems containing petroleum and listing of associated cleanup levels. A motion was made and seconded to approve the following amendments to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42.090. Financial responsibility. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the application of federal regulations; (2) to amend the STATUTORY AUTHORITY paragraph to include KRS 224.60-120; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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.

401 KAR 42.200. Underground storage tank system operator registration fees. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Sections 2 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42.250. Petroleum Storage Tank Environmental Assurance Fund Reimbursement Procedures. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend Section 2(1) to differentiate between current and previous eligibility certificates; (4) to amend Section 2(5) to clarify that the commissioner shall identify in writing deficiencies in the Application for Assistance; (5) to amend Section 8 to delete deficient claim requirements that conflicted with KRS 224.60-140; (6) to amend Section 15 to clarify corrective action activities; (7) to amend the Application for Assistance, incorporated by reference, to decrease the Required Financial Information exception from a $250,000 five-year average total income to $100,000; and (8) to amend Sections 2, 3, 4, 7, 8, 12 through 16, 21, and 26 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42.290. Ranking system. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete a C.F.R citation; (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 Sections 2(2) and 3(2) to: (a) correctly set forth financial ability requirements for categorizing within ranks for the Financial Responsibility Account; and (b) delete indefinite language requiring submission of "additional information" related to financial ability to: (4) to amend Section 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
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401 KAR 42:300. Third-party claims. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clarify state the necessity for and function served by this administrative regulation; (2) to amend Section 2(2) to clarify the eligibility requirements for receiving reimbursement or payment for a third-party claim; and (3) to amend Section 2 to clarify that a third-party claim shall be paid based on the basis of a written agreement between a third party and the owner or operator, as approved by the cabinet. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:314. Contractor certification. 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 TITLE and the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clarify that this administrative regulation applies to individual contractor certification; (3) to amend Section 6(6) to clarify that examination results shall be given out immediately upon completion of the exam; (4) to amend Section 7 to clarify that a contractor shall be given written notification if significant statutory, regulatory or industry changes occur; and (5) to amend Section 8 to clarify that certification suspension or revocation will be effective upon receipt of a notification letter; and (6) to amend Sections 2 through 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.

401 KAR 42:316. Certification of contracting companies. 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 clarify state the necessity for and function served by this administrative regulation; (3) to amend Section 2 to clarify that this administrative regulation applies to company or partnership certification; (4) to amend Section 2 to clarify that applicable work experience shall be provided to demonstrate technical, administrative and financial capabilities; and (5) to amend Sections 1 through 3 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:330. Small Owners Tank Removal Account. 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 clarify state the necessity for and function served by this administrative regulation; (3) to amend Sections 2 and 4 through 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:335. Financial audits. A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:340. Laboratory certification. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 2 and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Environmental Protection: Division for Air Quality: Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:051. Repealer of 415 KAR 1.050.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:999. Corrections secured policies and procedures. This administrative regulation was reviewed and amended, with agreement of the agency, by the Subcommittee in closed session pursuant to KRS 61.810(1)(l), KRS 61.815(2), and KRS 197.025(5).

Department of State Police: Driver Testing Branch: Driver Training

502 KAR 10:110 & E. Third-party CDL skills test examiner standards. Roger Wright, assistant general counsel, and Lt. Adam Whitlock, CDL coordinator, represented the department.

In response to questions by Senator Tapp, Lt. Whitlock stated that this administrative regulation addressed potential conflicts of interests that existed between CDL examiners and the commercial driver’s license training schools that hired the examiners. The Kentucky State Police would oversee the examiners, train them, and pay for their services.

In response to a question by Senator Tapp, Mr. Wright stated that the department did not receive comments on this administrative regulation.

In response to questions by Representative Reinhardt, Lt. Whitlock stated that it was not difficult to receive a commercial driver’s license. The changes were proposed to align Kentucky’s program with issues noted in recent federal audits. Applicants for a CDL may choose to attend a private commercial driver’s training school but attendance at a driver's training school was not required.

In response to a question by Representative Bruce, Lt. Whitlock stated that farmers were not required to have a commercial driver’s license if they were transporting their products to a market within 150 miles.

A motion was made and seconded to approve the following amendment: to amend Section 1 to clarify the definition of "Third-party CDL skills test examiner." Without objection, and with agreement of the agency, the amendment was approved.

EDUCATION CABINET: Kentucky Board of Education: Department of Education: Office of Instruction

704 KAR 3:305. Minimum requirements for high school graduation. Kevin Noland, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 to 7 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 2 to: (a) specify that the substituted courses shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth or complexity of the general grade-level content standards; and (b) delete the requirement that a rationale and course description be filed with the department; and (4) to amend Section 7 to specify that students completing an alternative course of study shall receive a certificate of attainment to be awarded by the local board of education consistent with the graduation practices for all students. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: School Facilities Construction Commission: Procedures


A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Labor: Office of Workers’ Claims: Office


A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 5, 6, 7, 8, 11, 13, 20, 21, 24, and 27 to: (1) correct the names and form numbers of the material incorporated by reference; and (2) 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 Public Protection: Office of Housing, Buildings and Construction: Kentucky Board of Home Inspectors

815 KAR 6:010 & E. Home inspector licensing requirements and maintenance of records. Ray Sandbeck, chair, Ralph Wirth, vice chair, and David Reichert, general counsel, represented the board.

In response to questions by Representative Lee, Mr. Sandbeck stated that the board determined the amount of the licensure fee based on a comparison to the fees charged in Indiana and Illinois and fees charged for other professional licenses. Ohio and West Virginia did not currently license home inspectors.

Representative Lee stated that the board should set the renewal fee based on the administrative and other actual costs for licensure in Kentucky, rather than the costs of other states. He recommended that the board examine the fee amounts and its budgetary needs over the next year, and if the board determined that $250 was excessive for Kentucky’s program, the board should reduce the fee.

In response to questions by Senator Tapp, Mr. Wirth stated that pre-licensing students were required to have eight hours of inspection in a laboratory, during which time the students would receive practical training in handling actual problems commonly used in home inspections.

In response to questions by Representative Reinhardt, Mr. Wirth stated that the national tests that examined the competence of potential home inspectors included questions about general indoor air quality and other environmental issues. Thus, the board was requiring that pre-licensing training courses include one hour of instruction on environmental hazards, mitigation, water quality, and indoor air quality. The basic instruction required in these areas would give potential home inspectors familiarity with the terminology likely to appear on the national examination, including terms such as radon, lead, molds, and mildews. Home Inspectors were not required to conduct indoor air quality or mold studies during home inspections.

In response to questions by Representative Bruce, Mr. Wirth stated that termite inspections were required before a home could be sold, but those inspections were not within that agency’s jurisdiction.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct a statutory citation; and (3) to amend Sections 2, 4, 5, 7, 8, 9 to comply with the drafting and format requirements of KRS Chapter 13A, (4) to amend Section 2 to specify that a pre-licensing training course shall include: (a) eleven, rather than twelve, hours relating to standards of practice, licensing law and regulations, contracts, report writing, and communications; (b) sixteen hours of actual inspection, with eight hours in a laboratory and eight hours in field training; and (c) one hour of environmental hazards, mitigation, water quality and indoor air quality; and (4) to amend Section 6 to: (a) require submission of a copy of a completed inspection report that has been compiled within the previous twelve months immediately preceding renewal; and (b) remove the requirement that renewal applicants undergo a statewide background check before license renewal. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 6:020. Advertising by home inspectors. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct a statutory citation; and (2) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 6:030. Home inspector standards of conduct. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 to 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Medicaid Services

907 KAR 1:145 & E. Supports for community living services for an individual with mental retardation or a development disability. Angela Kirkland, director, Stuart Owen, regulations coordinator, and Johann Herklotz, deputy general counsel, represented the department. Heidi Schissler, attorney, and Karen Fitzgerald, director, appeared on behalf Kentucky Protection and Advocacy in opposition to this administrative regulation and 907 KAR 1:155 & E.

In response to questions by Representative Bruce, Ms. Kirkland stated that this administrative regulation increased the number of available residential beds for transitioning residents out of ICF/MR institutions, including Oakwood. The department wanted the beds available for transitioning residents who wanted to leave their current placements.

Ms. Schissler stated that while Kentucky Protection and Advocacy believed that many of the proposed amendments to these administrative regulations were positive and appropriate, it still had concerns about the definition of disability and the placement sizes. Currently if a person had retardation, a developmental disability or related condition and needed long-term care, the person would either be in an ICF/MR institution or in a community placement paid for by Medicaid through the SCL (supports for community living) program. Persons with either an intellectual or adaptive behavior deficit were eligible for placement in either the institution or community living setting. However, the change in Section 1(7) of this administrative regulation made it a requirement that the person have both intellectual deficits and adaptive behavior deficits to receive a community placement. The change in this definition would prevent some individuals from receiving a more appropriate community placement by requiring that they be placed in an institution.

In response to questions by Representative Lee, Ms. Kirkland stated that the department did not change an existing definition but simply added a definition of "developmental disability" to this administrative regulation. The federal Centers for Medicare and Medicaid Services (CMS) recognized three population types, including the mental retardation/developmental disability population, the aged and physically disabled population, and the traumatic brain injury population. CMS would not allow the department to have cross-populations and the waivers would be jeopardized if intellectual deficits were not required. For instance, a person with epilepsy or cerebral palsy without intellectual deficits would be covered as part of the aged and physically disabled population and receive services based on the home and community based waivers. This administrative regulation did not change the SCL criteria regarding which patients qualified for the program.

Ms. Fitzgerald stated that Kentucky Protection and Advocacy applauded the department’s efforts for transitioning people out of Oakwood but was concerned because this administrative regulation would allow up to eight individuals receiving SCL services to live together in a group home. Their research showed that as the size of group homes increased, the outcomes (quality of care and services) decreased. The group home size for persons receiving SCL funding should remain at three persons.

In response to questions by Senator Pendleton, Ms. Kirkland stated that the department was not expanding the number of residents at group homes. The group homes were currently limited to

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eight residents, with no more than three receiving SCL funding. The change would allow up to eight residents to receive SCL funding. Under current requirements, if a person in a group home became eligible for SCL funding and there were already three SCL recipients in that group home, the person would be required to transfer to a different group home. The proposed change would enable that person to stay in the group home. The department worked hard to develop transition plans for each person, taking into consideration the person's health, safety, and welfare, to ensure that the plan was the most appropriate for that person. The department was working to increase the number of providers and thus the number of available placements.

In response to questions by Representative Lee, Ms. Kirkland stated that the department would closely monitor the impact of increasing the number of SCL recipients in group homes. She believed that the staffing arrangements at group homes would provide more supervision of residents than the arrangement at Oakwood provided.

In response to questions by Representative Bruce, Ms. Kirkland stated that it was difficult to retain qualified employees at Oakwood due to its location, the available workforce, and the number of retirements.

In response to questions by Senator Kerr, Ms. Kirkland stated that the department had communications with Kentucky Protection and Advocacy about this administrative regulation. She did not wish to defer consideration of this administrative regulation because the department needed the additional SCL slots for transitioning persons currently in other placements. If the administrative regulation were deferred, there would be a period of time, about a week, after the emergency administrative regulation expired before the new ordinary administrative regulation would become effective. That would affect the transitions, the number of SCL beds available, the incentives for providers, criminal background and safety checks, and other training requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 7 to correct statutory citation; and (2) to amend Sections 1 to 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.

907 KAR 1:155 & E. Payments for supports for community living services for an individual with mental retardation or a developmental disability. A motion was made and seconded to approve the following amendments: to amend Section 4 to comply with the format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Mental Health and Mental Retardation Services: Division of Administration and Financial Management: Institutional Care

908 KAR 3:190 & E. Drug testing policies at a state-operated facility for persons with mental illness or mental retardation. Linda Hamre, deputy commissioner, represented the department.

In response to questions by Senator Pendleton, Ms. Hamre stated that this administrative regulation established the drug testing policies for state-operated facilities for persons with mental illness or mental retardation.

A motion was made and seconded to approve the following amendments: (1) to amend the title to more accurately reflect the content of this administrative regulation; (2) to amend Section 1 to include definitions for "Commissioner" and "Officer" and to more clearly define "return to duty"; (3) to amend Section 3 to specify reporting dates for the employee roster; and (4) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 2, 3, 4, 5, 7, 9, 10, and 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Policy Development: Child Support

921 KAR 1.410. Child support collection and enforcement. Elizabeth Caywood represented the department.

Food Stamp Program

921 KAR 3:035. Certification process. A motion was made and seconded to approve the following amendments: to amend Sections 1 and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Policy Development: Day Care

922 KAR 2:160. Child Care Assistance Program. A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 3, and 6 to clarify requirements and to insert waiver standards; (2) to amend Sections 2, 3, 4, 6, 7, and 10 end the material incorporated by reference to replace the current required forms with updated versions; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, 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.

The following administrative regulations were deferred to the next meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Real Estate Commission: Commission

201 KAR 11:011 & E. Definitions for 201 KAR Chapter 11.
201 KAR 11:121 & E. Improper conduct.

Board of Chiropractic Examiners: Board

201 KAR 21:025. Board; officers, duties.
201 KAR 21:051. Board hearings; complaints.
201 KAR 21:055. Colleges and universities; accreditation, approval.
201 KAR 21:085. Preceptorship program.
201 KAR 21:100. Minimum standards for recordkeeping/recorded statements.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Public Protection: Kentucky Horse Racing Authority: Thoroughbred Racing

810 KAR 1:080. International wagering hubs.

The subcommittee adjourned at 12:10 p.m. until September 12, 2006 at 10 a.m. in room 154 Capitol Annex.
OTHER COMMITTEE REPORTS

COMPILER’S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of July 24, 2006

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of July 24, 2006, having been referred to the Committee on July 5, 2006, pursuant to KRS 13A.290(6):

201 KAR 20:370
201 KAR 20:411
201 KAR 25:031
201 KAR 36:030
201 KAR 36:040
201 KAR 36:070
900 KAR 5:020
900 KAR 6:050
902 KAR 29:091
902 KAR 55:110
906 KAR 1:110
908 KAR 3:060
921 KAR 3:060

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 24, 2006 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of July 26, 2006

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on State Government for its meeting of July 26, 2006, having been referred to the Committee on July 5, 2006, pursuant to KRS 13A.290(6):

31 KAR 4:160
31 KAR 4:170

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

NONE

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A 320:

NONE

The following administrative regulations were deferred pursuant to KRS 13A.300:

NONE

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 26, 2006 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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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 2005 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 32**

The administrative regulations listed under VOLUME 32 are those administrative regulations that were originally published in Volume 32 (last year’s) issues of the Administrative Register but had not yet gone into effect when the 2006 bound Volumes were published.

**EMERGENCY ADMINISTRATIVE REGULATIONS:**
(Note: 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)

**ORDINARY ADMINISTRATIVE REGULATIONS:**

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*** Withdrawn before being printed in Register
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