ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 36, NUMBER 11
Saturday, May 1, 2010

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The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet May 11, 2010 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **2155-2156** of this Administrative Register.

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

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

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

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

STATEMENT OF EMERGENCY
810 KAR 1:025E

KRS 230.260(9) grants the Kentucky Horse Racing Commission the authority to issue and establish the conditions of licensure in the Commonwealth of Kentucky. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission. KRS 230.260(9) states as follows: "Applications for licenses shall be made in the form, in the manner, and contain information as the authority may, by administrative regulation, require. Fees for all licenses issued under KRS 230.310 shall be prescribed by and paid to the authority." KRS 230.310 provides that each license issued by the commission is effective for the duration of the calendar year in which it is issued. Due to the need for increased enforcement activities, a corresponding increase in licensing fees is warranted. This emergency administrative regulation is necessary to allow the amended fees to apply to all licenses processed and issued for the 2010 calendar year and to remove association licensing requirements in order to be consistent with 810 KAR 1:034E. The delays inherent in the ordinary administrative regulation process will not permit licenses to be issued under the new fee structure throughout 2010. Since pari-mutuel horse racing will be conducted in Kentucky throughout the year 2010, it is imperative that licenses be issued consistently throughout the year under the new fee structure. This emergency administrative regulation also clarifies the commission's right to seize suspected contraband in the course of investigating suspected violations of KRS Chapter 230 and KAR Title 810. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. This emergency administrative regulation is substantially different from the administrative regulation filed July 20, 2009 because all association licensing requirements have been removed in order to comply with 810 KAR 1:034E and because it specifically states that the commission has the right to seize suspected contraband in the course of investigating suspected violations of KRS Chapter 230 and KAR Title 810. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
LARRY BOND, Deputy Secretary
ROBERT M. BECK, JR., Chairman

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

810 KAR 1:025E. Licensing thoroughbred racing.

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(4), 230.290(2), 230.300(1)(h), EO 2009-535 [~~230.320~~]

EFFECTIVE: March 26, 2010

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

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

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

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

(a) Racing participants and personnel including the following: owner, authorized agent, trainer, assistant trainer, jockey, apprentice jockey, jockey agent, farm manager or agent, veterinarian, veterinary technologist or technician, veterinary assistant, farrier, vendor, mutuel clerk, exercise rider, stable employee, and any employee listed in Section 5 of this administrative regulation;

(b) Racing officials;

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

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

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

(f) Commission members.

(2) A person working at a licensed racing association in the Commonwealth shall obtain a valid license issued by the commission. The executive director, chief racing steward, or their designee may refuse entry or scratch any horse involving any person who, after being requested to obtain a valid license, fails or is unable to obtain a license.

(3)(a) A person required to be licensed shall submit:

1. A completed written application on the form Licensing Application, KHRA 25-01 (10/08), or the Multi-jurisdictional License Form pursuant to Section 7 of this administrative regulation; and

2. The fee required by Section 5 of this administrative regulation.

(b) A temporary license may be obtained by an authorized representative of an owner in accordance with Section 18 of this administrative regulation. A conditional license may be issued by the commission or its designee upon submission of a written application.

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

(2)(a) An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force.

(b) An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 18 of this administrative regulation.

(c) The license application shall be reviewed and the license issued by commission personnel.

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

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

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

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

(6) The commission shall provide notice to an applicant that the license has been issued, denied, or refused. If all requirements for licensure are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Specific Licenses. (1) Veterinary personnel.

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

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician shall be accompanied by evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth, and KHRA Form 25-4 signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS 321.443.

(c) An application from a veterinary assistant shall be accompanied by a KHRA Form 25-4 signed by a licensed veterinarian certifying that the applicant is employed by him or her as required by KRS 321.443.

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

(3) Stable employee, occupational employee, or vendor employee. In order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant shall submit a KHRA Form 25-4 from his or her employer verifying employment and workers' compensation coverage.

(4) Special event licensees.

(a) A special event license shall be:

1. Issued to employees who are employed by an association only for the duration of a special event; and

2. Valid for the days of the event only.

(b) The duration of the license shall not exceed three (3) calendar days.

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

(a) $150 - owner, trainer, assistant trainer, veterinarian, jockey, jockey agent, claiming license, and temporary license;

(b) $100 - racing secretary, assistant racing secretary, director of racing, starter, assistant starter, paddock judge, patrol judge, placing judge, timer, jockey apprentice, farrier, steward, testing laboratory employee, racing department employee, valet, and outrider;

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

(d) Twenty-five (25) dollars - association employee, occupational employee, vendor employee, any person employed by a concern contracting with the association to provide a service or commodity and which employment requires that person's presence on association grounds during a race meeting, horse identifier, photo finish operator, film patrol crew member, television production employee, member of an association security department (including a policeman, watchman, fireman, ambulance driver, or emergency medical technician), track superintendent, member of maintenance department staff, admissions department manager and employee, association concessions manager and employee, parking manager and employee, and all other persons employed by the association; and

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

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

Section 6. Fingerprinting. (1) If requested, a license applicant shall furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license.

(2) If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints.

(3) The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section 7. Multi-state/National Licenses. (1) In lieu of a license application as required by this administrative regulation, an applicant may submit an ARCI Multi-State License and Information Form or the National Racing Compact License and Information Form.

(2) It shall be accepted if the commission determines that it ensures compliance with all licensing requirements in this administrative regulation and KRS Chapter 230.

Section 8. Consent to Investigate by License Applicants and Licensees. After an applicant files a license application, the commission may:

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

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

(3) Verify information provided by the applicant.

Section 9. Search and Seizure. (1) The commission or designee may search any location described in KRS 230.260(7).

(2) The commission or designee may seize any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of KRS Chapter 230 or KAR Title 810 or 811

(3) A licensee shall:

(a) Cooperate with the commission or designee during an investigation; and

(b) Respond correctly to the best of the licensee's knowledge if questioned by the commission or designee about a racing matter.

(c) Consent to out-of-competition testing at any time or place designated by the commission.

Section 10. Employer Responsibility. (1)(a) An employer shall not employ an unlicensed person for a position that requires a license under KRS 230.300 or 230.310 or this administrative regulation.

(b) If an employer does so, the employer may be subjected to license suspension, denial, or revocation under KRS Chapter 230, or KAR Title 810 or 811.

(2) Every employer shall report in writing to the commission or its designee, within twenty-four (24) hours, the discharge of any licensed employee, including the employee's name, occupation, and reason for the discharge.

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

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

(5) A licensed employer shall carry workers' compensation insurance covering his or her employees as required by KRS Chapter 342.

Section 11. Financial Responsibility. (1) A licensee shall maintain financial responsibility during the period for which the license is

issued.

(2) A licensee's failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of his or her licensed occupation, shall constitute a failure to meet the financial responsibility requirements of KRS 230.310.

(3) If the licensee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked until the licensee provides written documentation of satisfaction of the judgment.

(4) An applicant for a license may be required to submit evidence of financial responsibility to the commission if a judgment has been rendered against him or her.

Section 12. Voluntary Withdrawal of License Application. (1) A license applicant may, upon the approval of the license review committee voluntarily withdraw his or her license application from the license review process.

(2) If the applicant chooses to voluntarily withdraw his or her application, then the withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice.

(3) The stewards shall issue a ruling noting a withdrawal, and the ruling shall be communicated to the ARCI.

Section 13. License Review Committee. (1) The executive director, chief racing steward, or director of licensing may refer a license application to the license review committee in lieu of denying.

(2) The license review committee shall be composed of the executive director or designee, the director of licensing or designee, the chief state steward or his or her designee, and at least one other commission member or commission staff member as designated by the executive director.

(3) At least three (3) members of the committee shall participate in any license review committee meeting.

(4) If a referral to the committee is made, then a license shall not be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee to appear personally. If the committee is unable to make a favorable ruling on the license application, then the committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section 13 of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.

(5) The denial or refusal of the application shall be subject to appeal in accordance with KRS Chapter 13B.

(6) In the alternative, the commission, the license review committee, or the executive director may refer the case directly to the commission without denial or approval of the application.

Section 14. License Denial, Revocation, or Suspension. (1) The commission, executive director, chief racing steward, or director of licensing may refuse or deny a license application, and the commission or chief state steward may suspend or revoke a license, or otherwise penalize in accordance with KRS 230.320(1) a licensee, or other person participating in horse racing, for any of the following reasons:

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

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

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

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

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

(f) The licensee or applicant has applied for and received a license at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A firearm; or

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

(t) The licensee or applicant has violated any of the alcohol or substance abuse provisions outlined in KRS Chapter 230 or 810 KAR 1:060;

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

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

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

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

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

2. Failure to race when programmed unless excused by the stewards;

3. Fighting;

4. Assaults;

5. Offensive and profane language;

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

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

8. Disturbing the peace;

(y) The licensee or applicant has used profane, abusive, or insulting language to or interfered with a commission member, employee or agent, or racing official, while these persons are in the

course of discharging their duties;

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

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

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

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

(dd) The licensee or applicant has failed to comply with a written directive or ruling of the commission or the chief state racing steward;

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

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

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

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

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

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

1. A hypodermic needle, hypodermic syringe, or other device which could be used to administer any substance to a horse, except as permitted by 810 KAR 1:018, Section 3(5); or

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

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

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the chief steward, and to the ARCI by the Division of Licensing, to ensure that other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

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

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

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

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

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

(a) Criminal charges;

(b) Criminal convictions;

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

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

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

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

Section 17. Temporary Licenses. (1)(a) Only an owner is eligible for a temporary license.

(b) A horse in a trainer's care shall not start in a race unless the owner has a current license or has an application for a temporary license, "Application for a Temporary Owner's License", KHRC 25-02 (01/10), on file with the commission.

(c) A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains.

(d) The commission may refuse the license if the applicant fails to supply a name, Social Security number, and mailing address for a temporary license.

(e) A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the 30th day pending completion of all licensing procedures.

(f) Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended or the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures.

(g) Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(h) If a temporary license expires prior to the completion of all owner licensing procedures, the applicant shall pay an additional licensing fee.

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

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

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

Section 19. Conflict of Interest. (1) The license review committee and the chief state steward or designees shall deny or refuse to process the license of a person, and the commission or the chief state steward shall revoke or suspend a licensee, who is determined to have a conflict of interest. A conflict of interest may exist if a spouse, immediate family member, or other person in a similar relationship to the licensee or applicant holds a license which the license review committee or chief state steward find to be a conflict of interest with the licensee's or applicant's. A finding of a conflict of interest may be appealed to the commission pursuant to KRS 230.320 and KRS Chapter 13B.

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

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

(a) Racing official;

(b) Assistant starter;

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

(d) Veterinary technician, veterinary technologist, veterinary assistant, or equine therapist for any horse other than the owner's;

(e) Officer or managing employee;

(f) Track maintenance supervisor or employee;

(g) Outrider;

(h) Race track security employee;

(i) Farrier;

(j) Photo finish operator;

(k) Horsemen's bookkeeper;

(l) Racing chemist;

(m) Testing laboratory employee;

(n) Jockey;

(o) Apprentice jockey; or

(p) Jockey agent.

(4) More than one (1) license to participate in racing may be granted to a person except if prohibited by this administrative regulation due to a potential conflict of interest.

Section 20. License Photo Identification Badges. (1)(a) If a licensee desires access to restricted areas of a racing association

grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge).

(b) A photo identification badge is available to a licensee upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.

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

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

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

(5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the executive director, the stewards, the commission director of security, or director of licensing, or designee, upon request.

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

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

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

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

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

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

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

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

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

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

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

(a) "Licensing Application", KHRC 25-01, (3/10);

(b) "Application for a Temporary Owner's License", KHRC 25-02 (1/10);

(c) "Change in Application Information Form", KHRC 25-03 (1/10); and

(d) "Veterinarian Authorization Form", KHRC 25-04 (1/10).

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

[~~(1) Information provided on or with license application shall be complete and correct.~~

~~(2) A licensee shall abide by all rulings, and decisions of the stewards and all decisions by the stewards shall remain in force unless reversed or modified by the commission upon proper appeal.~~

~~(a) Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to:~~

~~1. Findings of fact as occurred during and incident to the running of a race; and~~

~~2. A determination of the extent of disqualification of horses in a race for fouls committed during the race.~~

~~(b) Excepted rulings and decisions by the stewards shall be final with no right of review by the commission.~~

~~(3)(a) A licensee shall consent to a reasonable search of his property in his possession by the commission or its representatives, the property being restricted to that on association grounds and including tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort.~~

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

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

~~(4)(a) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard the horses from tampering.~~

~~(b) Upon a finding of a positive test result for a prohibited medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance, in a saliva, urine, blood, or other specimen taken from a horse, the trainer of the horse shall be held responsible for the test results unless the trainer can establish that the stimulant, sedative, depressant, local anesthetic, or any foreign substance was administered to the horse by another person.~~

~~Section 2. The commission may issue a license to an association which applies for a license to conduct a thoroughbred race meeting on days as the commission may deem appropriate.~~

~~Section 3. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order other disciplinary measures, on the following grounds:~~

~~(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where the applicant was denied a license or where his license was suspended or revoked;~~

~~(2) Conviction of a crime or violation of any statute or administrative regulation;~~

~~(3) Falsification, misrepresentation, or omission of required information in a license application to the commission.~~

~~(a) Failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; or~~

~~(b) Misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;~~

~~(4) Making false or misleading statements to the commission or the stewards in an application for a license or in the course of an investigation;~~

~~(5) Failure to comply with any order or ruling of the commission, stewards, or racing official;~~

~~(6) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in these activities;~~

~~(7) Applying for an receiving a license by a person less than sixteen (16) years of age;~~

~~(8) Being incompetent or unqualified in the performance of the activity for which the license is granted as determined by standard examinations prescribed by the stewards;~~

~~(9) Intoxication, use of profanity, fighting or any conduct of a disorderly nature on association grounds;~~

~~(10) Employment or harboring of unlicensed persons required by these administrative regulations to be licensed;~~

~~(11) Discontinuance of or ineligibility for activity for which license was issued;~~

~~(12) Possession on association grounds, without written permission from the commission or stewards, of:~~

~~(a) Firearms;~~

~~(b) Battery, buzzer, or electrical device; or~~

~~(c) Other appliance other than an ordinary whip which could be~~

~~used to alter the speed of a horse in a race or workout;~~

~~(13) Possession on association grounds by a person other than a licensed veterinarian of:~~

~~(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse; or~~

~~(b) Medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance prohibited by the commission;~~

~~(14) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while these persons are in the discharge of their duties;~~

~~(15) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;~~

~~(16) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;~~

~~(17) Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;~~

~~(18) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;~~

~~(19) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, may be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized; or~~

~~(20) Aiding or abetting any person in violation of any administrative regulation of the commission.~~

~~(21) A licensee's failure to satisfy a judgment rendered against him, for goods, supplies, services or fees furnished him and used in the course of his 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 said judgment is inconsistent with the best interests of racing and the maintenance of honesty, integrity and high quality thereof and is cause for suspension of the license and denial of any renewal of same.~~

~~Section 4. License Applications for Associations. Persons or legal entities desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license. Applications shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made. The application shall contain:~~

~~(1) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with the degree of ownership or type of interest shown;~~

~~(2) Names and addresses of persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary;~~

~~(3) Corporations, partnerships, or other legal entities which own or control a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities with the degree of ownership or type of interest pertaining to the ownership or interest;~~

~~(4) Names of racing officials and persons responsible for track security and fire protection;~~

~~(5) Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any;~~

~~(6) An operating report on forms prescribed by the commission if the applicant is currently licensed.~~

~~Section 5. License Application for Participants in Racing. (1)(a) Any person other than an association required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.~~

~~(b)The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.~~

~~(2) An application from a person not previously licensed in Kentucky shall include the names of two (2) reputable persons who shall attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.~~

~~(3) An application from a person whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.~~

~~(4)(a) An application from a person, corporation, partnership, lessor, or other entity involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of the horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.~~

~~(b) An application shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made.~~

~~(5)(a) An application from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.~~

~~(b) An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not be considered as participating in racing in this state.~~

~~(6) An application from a person desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who shall attest to the technical competence of the applicant and under whose sponsorship and direction the applicant shall work on association grounds.~~

~~(7) An application from a person not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until the applicant has successfully completed a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of the applicant for a farrier's license.~~

~~(8) The following annual fees shall accompany the application and shall not be refundable:~~

~~(a) $100 - owner, trainer, assistant trainer, veterinarian, farrier, apprentice farrier, jockey, jockey agent, racing official, steward, testing laboratory employee; racing department employee, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, claiming license, and temporary license;~~

~~(b) Seventy-five (75) dollars - jockey apprentice;~~

~~(c) Fifty (50) dollars - veterinarian assistant, dental technician, stable area supplier license (for suppliers of horse feed, tack, medication, or food vendors), mutuel employee, farm manager, farm agent;~~

~~(d) Twenty-five (25) dollars - association employee, occupational employee, vendor employee, or any person employed by a concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, photo finish operator, film patrol, television production employees, association security department including policemen, watchmen, firemen, ambulance drivers, emergency medical technicians, track superintendent, maintenance department staff, admissions department manager and employees, association concessions manager and employees, parking manager, and employees, all other persons employed by the association;~~

~~(e) Ten (10) dollars - special event mutuel employee license.~~

~~1. Stable foreman, exercise personnel, hotwalker, groom,~~

~~watchman, pony person, and~~

~~2. Special event mutuel employee license which shall be valid for the day of the event only.~~

~~(9) The fee for a duplicate license shall be ten (10) dollars.~~

~~Section 6. Licensing Committee. (1) The commission may appoint a licensing committee which may include the executive director and commission steward or their designated representative.~~

~~(2) The licensing committee shall review all applications for all licenses, and forward the applications to the commission with recommendations, subject to security checks, for final action.~~

~~(3) The licensing committee may issue to a license applicant a temporary permit to participate in the activity for which a license application was made pending administrative processing and final action on license application by the commission.~~

~~Section 7. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.~~

~~Section 8. Possession of License Required. A person required to be licensed by this administrative regulation shall not participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license and having the license in his possession. Licenses specified under Section 5(8)(a), (b), (c), (d), and (e) of this administrative regulation shall include a color photograph of the licensee and shall be openly displayed on the backside of association grounds at all times. An owner shall not be required to have a color photograph included on his or her license.~~

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

~~(a) "Licensing Application" (KRC-15(10/02));~~

~~(b) "Race Track License Application", (KRC-16 (12/01)); and~~

~~(c) "Corporate Disclosure Form", (KRC-17 (12/01)).~~

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

ROBERT M. BECK, JR., Chairman
LARRY BOND, Deputy Secretary

APPROVED BY AGENCY: March 24, 2010

FILED WITH LRC: March 26, 2010 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, 810 KAR 1:025E, governs the licensing of individual participants in thoroughbred horse racing in the Commonwealth of Kentucky.

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

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

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

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

(a) How the amendment will change this existing administrative regulation: This amendment contains several substantive changes which update the licensing standards for thoroughbred racing and increase the licensing fee in some categories of licenses, in order to insure that there is adequate funding for operational costs of the commission. It provides definition to the commission's right to search and seize suspected contraband during investigations of suspected violations of KRS Chapter 230 and KAR Title 810. In addition, it also amends the language of the regulation to conform to KRS Chapter 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to update the licensing standards for thoroughbred racing to be consistent with 810 KAR 1:034E, and to increase the licensing fees to provide adequate funding for the Kentucky Horse Racing Commission.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 17,000 thoroughbred licenses are issued in a calendar year to a variety of licensees, including owners, trainers, assistant trainers, jockeys, stable employees, veterinary personnel, racing officials, farriers, vendors, agents, mutuel clerks, agents, and employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: All of the above entities will be impacted by updates in licensing standards and procedures. The increase in licensing fees from $100 to $150 will apply to owners, trainers, assistant trainers, jockeys, jockey agents, and veterinarians. This fee increase will affect approximately 8,000 license applicants in these categories.

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to comply with the updates to the licensing regulations. There will be a $50 increase in licensing fees to owners, trainers, assistant trainers, jockeys, jockey agents, and veterinarians.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All participants will benefit from better notice regarding the requirements and procedures to obtain a license and increased regulatory oversight of licensees.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.240(2), 230.260, 230.290(2), 230.300(1)(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. Will increase funding for thoroughbred racing by approximately $400,000.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? See above.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See above.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
810 KAR 1:037E

KRS 230.300 authorizes the Kentucky Horse Racing Authority to issue and establish the conditions of licensure to conduct horse racing in the Commonwealth of Kentucky. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the Commission. KRS 230.260(9) states as follows: "Applications for licenses shall be made in the form, in the manner, and contain information as the authority may, by administrative regulation, require. Fees for all licenses issued under KRS 230.310 shall be prescribed by and paid to the authority." This emergency administrative regulation is necessary to meet the association application deadlines set forth in KRS 230.300. An ordinary administrative regulation will not be effective in time to meet the application deadline and award race dates for the 2011 calendar year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation is not substantially similar to 810 KAR 1:034E, effective September 30, 2009. It has been amended throughout for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Additionally Section 8 of this administrative regulation, regarding transfers in ownership of licensees, has been revised.

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

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

810 KAR 1:037E. Licensing of racing associations.

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.320, EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300, EO 2009-535

EFFECTIVE: March 17, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.300 authorizes the Kentucky Horse Racing Commission to issue licenses to conduct race meetings. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the Kentucky Horse Racing Authority to the commission. This administrative regulation establishes the licensing application procedures and requirements for conducting horse racing meetings in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

(2) "Principals" is defined by KRS 230.210(17).

(3) "Publicly traded corporation" means a corporation that has voting securities registered under Section 12 of the Securities and Exchange Act of 1934 (1934 Act), or issues securities subject to Section 15(d) of the 1934 Act, or has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, or is required to file under the 1934 Act.

(4) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

Section 2. License Applications for Associations. (1) New license applications. A person or legal entity desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).

(2) Renewal applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300.

(3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering".

(4) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any information required, the applicant shall fully explain and document to the satisfaction of the commission its inability to provide the information, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.300(9), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants.

(a) As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of $10,000.

(b) Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal or rejection of the initial license application or within twenty (20) days of the granting of the license.

(c) To the extent additional costs are incurred, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of the request.

(d) Failure to submit an additional requested payment shall result in suspension of the investigation or suspension of the processing of the license application and may result in denial of the

license.

(2) An applicant for an initial license shall also pay a licensing fee. The applicant shall submit, along with the license application, a cashier's check or certified check payable to the commission in the amount of $5,000. This fee shall be nonrefundable.

(3) Renewal applications. The commission shall not charge costs or fees for the renewal of racing association licenses.

Section 4. Licensing Criteria. (1) The commission shall issue a license if the commission determines that, on the basis of all the facts before it:

(a) The applicant meets all of the requirements under KRS Chapter 230, including KRS 230.280 and 230.300;

(b) The applicant meets all of the requirements of this administrative regulation;

(c) The applicant is qualified and financially capable to operate a race track;

(d) Racing meetings at the race track will be operated in accordance with KRS Chapter 230 and 810 KAR Chapter 1;

(e) Racing will be conducted by the applicant in accordance with the highest standards and the greatest level of integrity; and

(f) The issuance of a license will ensure the protection of the public interest.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:

(a) The integrity of the applicant and its principals, including:

1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes.

(b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;

(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;

(d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;

(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;

(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;

(g) The management ability of the applicant and its principals

(h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations.

(i) The efforts of the applicant to promote, develop, and improve the horse racing industry in Kentucky.

(j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:

1. Employment created, purchases of goods and services, public and private investment, and taxes generated;

2. Ecological and environmental impact;

3. Social impact; and

4. Cost of public improvements;

(k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and

(l) The effects of the location of the track, including the following:

1. Number, nature, and relative location of other licensees; and

2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing meetings and race dates to initial and renewal license applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks. Factors to be considered shall include the following:

(1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;

(2) The effects that various types of pari-mutuel racing have upon one another;

(3) The quality of horse racing provided at other racetracks;

(4) Dates traditionally awarded racetracks in the past;

(5) The past performance of the licensee;

(6) Whether the licensee has complied with KRS Chapter 230 and 810 KAR Chapter 1;

(7) Whether the assignment of racing dates will maximize revenues to the state;

(8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;

(9) The projected stability of the racing dates to be awarded; and

(10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. Oral Presentation by Applicant. (1) An applicant for a license may make an oral presentation of its application to the commission prior to the ruling on the application.

(a) The presentation shall be made by an applicant during a meeting of the commission.

(b) The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) The commission may require an applicant to clarify or otherwise respond to questions concerning the application as a condition to the issuance of a license.

(3) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 7. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue a license, including:

(a) Copies of any documents used by the applicant in preparing the application; and

(b) Contracts between the applicant and third parties related to operations.

(2) The request may be made before or after the oral presentation.

Section 8. Transfers of Licenses. (1) A license issued under KRS 230.300 and this administrative regulation is neither transferable nor assignable and is only applicable to the location for which the license is issued.

(2) A substantial change in ownership in a licensee shall result in termination of the licensee unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Kentucky Horse Racing Commission Change of Control Form." Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership shall be based.

(4) For purposes of subsection (3), notice is not required for:

(a) A nominal change in ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in an association, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who shall hold the voting securities of the

publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless such transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.

(5) Any attempt to effect a substantial change in ownership under this section not in writing shall be considered void by the commission.

Section 9. Material Modification, Expansion or Reduction of Proposed or Existing Facility. A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility (whether a final or conditional license in accordance with KRS 230.290) without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Delay in Completion of Racing Facility. (1) Except as provided by subsection (3) of this section, a licensee may be subject to a late fee not to exceed $15,000 a day for every day the licensee fails to conduct racing after the commencement date specified in the license.

(2) The amount of the fee shall be determined based on the economic impact caused by the licensee's failure to perform.

(3) The late fee required by subsection (1) of this section shall not be imposed for any particular day if the licensee can prove to the satisfaction of the commission that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors, such as:

(a) Acts of God or enemies of the United States;

(b) Acts of government in either its sovereign or contractual capacity;

(c) Fires;

(d) Floods;

(e) Epidemics;

(f) Quarantine restrictions;

(g) Strikes;

(h) Freight embargoes; and

(i) Unusually severe weather.

(3) If the cause of delay is the default of a contractor or subcontractor, and if the licensee proves to the satisfaction of the commission that the default arose out of causes beyond the control of the licensee, its contractors, and subcontractors, then the late fee shall not be due unless the supplies or services to be furnished by the contractor or subcontractor were obtainable from other sources in sufficient time for the licensee to meet the completion date.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering Form", KHRC 37-01, 3/10; and

(b) "Kentucky Horse Racing Commission Change of Control Form", KHRC 37-02, 3/10.

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

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing application procedures and requirements for conducting horse racing meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The regulation is necessary to provide association licensing standards, requirements, and procedures for conducting horse racing meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation describes the process, fees, procedures, and criteria for granting/denying association applications as authorized by KRS 230.300. Jurisdiction and authority to promulgate such regulation is set forth in KRS 230.215(2) and 230.260(1) and (9) governing the conditions of horse racing and the criteria for licensing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes procedures, fees, requirements, and criteria when granting or denying an association's initial/renewal license application.

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

(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: Racing associations are affected by this regulation (new/existing). Currently there are eight (8) associations 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 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 associations will be required to complete the application form and disclosure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The associations should already have the information required to comply with the regulation and complete the application form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Renewals will be streamlined, and a uniform application will allow associations to submit the same application.

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

(a) Initially: There is no anticipated increase in cost to the Commission.

(b) On a continuing basis: There is no anticipated increase in cost to the commission.

(6) 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 funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established for new applicants. New associations will pay an increased application fee and be the subject of additional questions due to additional information requirements and staff review.

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning association application licensing apply equally to all racing associations conducting horse racing meetings in the Commonwealth of 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? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.260, 230.280, and 230.300.

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 estimated change in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? N/C

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

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

STATEMENT OF EMERGENCY
810 KAR 1:100E

KRS 230.215 vests the Kentucky Horse Racing Authority with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission. KRS 230.320(1) states that the commission may promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license has been denied, suspended, or revoked or who has been assessed and administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5)(a) allows the commission to determine, in its final order, that an appeal is frivolous. Further, that statute states that if an appeal is frivolous, that fact shall be considered to be an aggravating circumstance and may be considered in assessing any penalty against the licensee and the licensee or other person who raised the appeal may be required to reimburse the commission for the cost of the investigation of the underlying circumstances of the case and the cost of the adjudication of the appeal. KRS 230.320(5)(b) requires the commission to, by administrative regulation, prescribe the conditions or factors by which an appeal may be determined to be frivolous. This emergency administrative regulation is necessary to define the term "frivolous" as it pertains to KRS 230.320 so that the commission may begin considering the potentially frivolous nature of an appeal as an aggravating circumstance in assessing penalties and recouping the costs in handling such appeals from the party who raised the appeal. At this time, the commission has the statutory authority to enhance penalties and recover costs associated with frivolous appeals but has been unable to do so because the term "frivolous" has not been defined. As a result, the commission has spent thousands of dollars defending appeals that would be considered frivolous under this emergency administrative regulation. It is imperative that it go into effect immediately so that the commission can begin recouping those costs and assessing the proper penalties against persons who file frivolous appeals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

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

810 KAR 1:100E. Frivolous appeals.

RELATES TO: KRS 230.215, 230.225(7), 230.310(2), 230.320, 230.330, EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.320(5), EO 2009-535

EFFECTIVE: March 17, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing Authority with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission. KRS 230.320(1) allows the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license is denied, suspended, or revoked or who is assessed and administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5) allows the commission to determine that certain appeals are frivolous and requires it to, by administrative regulation, prescribe the conditions or factors that would lead to such a determination. This emergency administrative regulation defines the term "frivolous" as it pertains to KRS 230.320(5).

Section 1. Frivolous Appeals. The commission may determine that an appeal is a frivolous appeal. An appeal shall be presumed to be frivolous if:

(1) The applicant applies for an appeal to the commission but fails, without good cause, to appear at the KRS Chapter 13B prehearing, if one is scheduled, or the KRS Chapter 13B hearing before the commission's hearing officer;

(2) 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; or

(3) The appeal is totally lacking in merit such that that it appears to have been taken in bad faith.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the term "frivolous" as it pertains to adminis-

trative appeals filed by licensees or other persons participating in Kentucky horse racing.

(b) The necessity of this administrative regulation: The regulation is necessary to define the circumstances under which an appeal will be deemed to be frivolous so that the Kentucky Horse Racing Commission may exercise the rights granted to it by KRS 230.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

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

(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: Licensees or other persons participating in Kentucky horse racing. There are roughly 17,000 persons licensed by the Kentucky Horse Racing Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated increase in cost to the entities described in question (3), although they will become subject to the payment of the Kentucky Horse Racing Commission's costs in defending and appeal if the appeal is deemed to be frivolous.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The stewards, judges, hearing officers and Commissioners will have more time to deal with the legitimate appeals and, as a result, will be better able to regulate horse racing in Kentucky.

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

(a) Initially: There is no anticipated increase in cost to the commission.

(b) On a continuing basis: There is no anticipated increase in cost to the commission.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning frivolous appeals apply equally to all licensees or persons participating in horse racing in the Commonwealth of 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? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.320(1), (2), (3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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: The regulation will allow the Kentucky Horse Racing Commission to recoup costs incurred in defending administrative appeals that are deemed to be frivolous.

STATEMENT OF EMERGENCY
811 KAR 1:037E

KRS 230.300 authorizes the Kentucky Horse Racing Authority to issue and establish the conditions of licensure to conduct horse racing in the Commonwealth of Kentucky. Executive Order 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the Commission. KRS 230.260(9) states as follows: "Applications for licenses shall be made in the form, in the manner, and contain information as the authority may, by administrative regulation, require. Fees for all licenses issued under KRS 230.310 shall be prescribed by and paid to the authority." This emergency administrative regulation is necessary to meet the association application deadlines set forth in KRS 230.300. An ordinary administrative regulation will not be effective in time to meet the application deadline and award race dates for the 2011 calendar year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation is not substantially similar to 811 KAR 1:034E, effective September 30, 2009. It has been amended throughout for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Additionally Section 8 of this administrative regulation, regarding transfers in ownership of licensees, has been revised.

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

PUBLIC PROTECTION CABINET
KENTUCKY HORSE RACING COMMISSION
(New Emergency Administrative Regulation)

811 KAR 1:037E. Licensing of racing associations.

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.320, EO 2009-535
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300, EO 2009-535
EFFECTIVE: March 17, 2010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.300 authorizes the Kentucky Horse Racing Commission to issue licenses to conduct race meetings. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the Kentucky Horse Racing Authority to the commission. This administrative regulation establishes the licensing application procedures and requirements for conducting horse racing meetings in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.
(2) "Principals" is defined by KRS 230.210(17).
(3) "Publicly traded corporation" means a corporation that has voting securities registered under Section 12 of the Securities and Exchange Act of 1934 (1934 Act), or issues securities subject to Section 15(d) of the 1934 Act, or has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, or is required to file under the 1934 Act.
(4) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

Section 2. License Applications for Associations. (1) New license applications. A person or legal entity desiring to conduct standardbred racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).
(2) Renewal applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300.
(3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering".
(4) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any information required, the applicant shall fully explain and document to the satisfaction of the commission its inability to provide the information, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.300(9), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants.
(a) As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of $10,000.
(b) Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal or rejection of the initial license application or within twenty (20) days of the granting of the license.
(c) To the extent additional costs are incurred, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of the request.
(d) Failure to submit an additional requested payment shall result in suspension of the investigation or suspension of the processing of the license application and may result in denial of the license.
(2) An applicant for an initial license shall also pay a licensing fee. The applicant shall submit along with the license application a cashier's check or certified check payable to the commission in the amount of $5,000. This fee shall be nonrefundable.
(3) Renewal applications. The commission shall not charge costs or fees for the renewal of racing association licenses.

Section 4. Licensing Criteria. (1) The commission shall issue a license if the commission determines that, on the basis of all the facts before it:
(a) The applicant meets all of the requirements under KRS Chapter 230, including KRS 230.280 and 230.300;
(b) The applicant meets all of the requirements of this administrative regulation;
(c) The applicant is qualified and financially capable to operate a race track;
(d) Racing meetings at the race track will be operated in accordance with KRS Chapter 230 and 810 KAR Chapter 1;
(e) Racing will be conducted by the applicant in accordance with the highest standards and the greatest level of integrity; and
(f) The issuance of a license will ensure the protection of the public interest.
(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:
(a) The integrity of the applicant and its principals, including:
1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);
2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;
3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;
4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and
5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes.
(b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;
(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;
(d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;
(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;
(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;
(g) The management ability of the applicant and its principals
(h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations.
(i) The efforts of the applicant to promote, develop, and improve the horse racing industry in Kentucky.
(j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:
1. Employment created, purchases of goods and services, public and private investment, and taxes generated;
2. Ecological and environmental impact;
3. Social impact; and
4. Cost of public improvements;
(k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and
(l) The effects of the location of the track, including the following:
1. Number, nature, and relative location of other licensees; and
2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing meetings and race dates to initial and renewal license applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks. Factors to be considered shall include the following:

(1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;

(2) The effects that various types of pari-mutuel racing have upon one another;

(3) The quality of horse racing provided at other racetracks;

(4) Dates traditionally awarded racetracks in the past;

(5) The past performance of the licensee;

(6) Whether the licensee has complied with KRS Chapter 230 and 810 KAR Chapter 1;

(7) Whether the assignment of racing dates will maximize revenues to the state;

(8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;

(9) The projected stability of the racing dates to be awarded; and

(10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. Oral Presentation by Applicant. (1) An applicant for a license may make an oral presentation of its application to the commission prior to the ruling on the application.

(a) The presentation shall be made by an applicant during a meeting of the commission.

(b) The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) The commission may require an applicant to clarify or otherwise respond to questions concerning the application as a condition to the issuance of a license.

(3) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 7. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue a license, including:

(a) Copies of any documents used by the applicant in preparing the application; and

(b) Contracts between the applicant and third parties related to operations.

(2) The request may be made before or after the oral presentation.

Section 8. Transfers of Licenses. (1) A license issued under KRS 230.300 and this administrative regulation is neither transferable nor assignable and is only applicable to the location for which the license is issued.

(2) A substantial change in ownership in a licensee shall result in termination of the licensee unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Kentucky Horse Racing Commission Change of Control Form." Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership shall be based.

(4) For purposes of subsection (3), notice is not required for:

(a) A nominal change in ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in an association, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who shall hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless such transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.

(5) Any attempt to effect a substantial change in ownership under this section not in writing shall be considered void by the commission.

Section 9. Material Modification, Expansion or Reduction of Proposed or Existing Facility. A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility (whether a final or conditional license in accordance with KRS 230.290) without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Delay in Completion of Racing Facility. (1) Except as provided by subsection (3) of this section, a licensee may be subject to a late fee not to exceed $15,000 a day for every day the licensee fails to conduct racing after the commencement date specified in the license.

(2) The amount of the fee shall be determined based on the economic impact caused by the licensee's failure to perform.

(3) The late fee required by subsection (1) of this section shall not be imposed for any particular day if the licensee can prove to the satisfaction of the commission that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors, such as:

(a) Acts of God or enemies of the United States;

(b) Acts of government in either its sovereign or contractual capacity;

(c) Fires;

(d) Floods;

(e) Epidemics;

(f) Quarantine restrictions;

(g) Strikes;

(h) Freight embargoes; and

(i) Unusually severe weather.

(3) If the cause of delay is the default of a contractor or subcontractor, and if the licensee proves to the satisfaction of the commission that the default arose out of causes beyond the control of the licensee, its contractors, and subcontractors, then the late fee shall not be due unless the supplies or services to be furnished by the contractor or subcontractor were obtainable from other sources in sufficient time for the licensee to meet the completion date.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering Form", KHRC 37-01, 3/10; and

(b) "Kentucky Horse Racing Commission Change of Control Form", KHRC 37-02, 3/10.

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

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing application procedures and requirements for conducting horse racing meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The regulation is necessary to provide association licensing standards, requirements, and procedures for conducting horse racing meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation describes the process, fees, procedures, and criteria for granting/denying association applications as authorized by KRS 230.300. Jurisdiction and authority to promulgate such regulation is set forth in KRS 230.215(2) and 230.260(1) and (9) governing the conditions of horse racing and the criteria for licensing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes procedures, fees, requirements, and criteria when granting or denying an association's initial/renewal license application.

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

(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: Racing associations are affected by this regulation (new/existing). Currently there are eight (8) associations 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 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 associations will be required to complete the application form and disclosure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The associations should already have the information required to comply with the regulation and complete the application form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Renewals will be streamlined, and a uniform application will allow associations to submit the same application.

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

(a) Initially: There is no anticipated increase in cost to the commission.

(b) On a continuing basis: There is no anticipated increase in cost to the commission.

(6) 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 funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established for new applicants. New associations will pay an increased application fee and be the subject of additional questions due to additional information requirements and staff review.

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning association application licensing apply equally to all racing associations conducting horse racing meetings in the Commonwealth of 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? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.260, 230.280, and 230.300.

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 estimated change in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? N/C

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

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

STATEMENT OF EMERGENCY
811 KAR 1:230E

KRS 230.215 vests the Kentucky Horse Racing Authority with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission. KRS 230.320(1) states that the commission may promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license has been denied, suspended, or revoked or who has been assessed and administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5)(a) allows the commission to determine, in its final order, that an appeal is frivolous. Further, that statute states that if an appeal is frivolous, that fact shall be considered to be an aggravating circumstance and may be considered in assessing any penalty against the licensee, and the licensee or other person who raised the appeal may be required to reimburse the commission for the cost of the investigation of the underlying circumstances of the case and the cost of the adjudication of the appeal. KRS 230.320(5)(b) requires the commission to, by administrative regulation, prescribe the conditions or factors by which an appeal may be determined to be frivolous. This emergency administrative regulation is necessary to define the term "frivolous" as it pertains to KRS 230.320 so that the commission may begin considering the potentially frivolous nature of an appeal as an aggravating circumstance in assessing penalties and recouping the costs in handling such appeals from the party who raised the appeal. At this time, the commission has the statutory authority to enhance penalties and recover costs associated with frivolous appeals but has been unable to do so because the term "frivolous" has not been defined. As a result, the commission has spent thousands of dollars defending

appeals that would be considered frivolous under this emergency administrative regulation. It is imperative that it go into effect immediately so that the commission can begin recouping those costs and assessing the proper penalties against persons who file frivolous appeals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

811 KAR 1:230E. Frivolous appeals.

RELATES TO: KRS 230.215, 230.225(7), 230.310(2), 230.320, 230.330, EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.320(5), EO 2009-535

EFFECTIVE: March 17, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing Authority with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission. KRS 230.320(1) allows the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license is denied, suspended, or revoked or who is assessed and administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5) allows the commission to determine that certain appeals are frivolous and requires it to, by administrative regulation, prescribe the conditions or factors that would lead to such a determination. This administrative regulation defines the term "frivolous" as it pertains to KRS 230.320(5).

Section 1. Frivolous Appeals. The commission may determine that an appeal is a frivolous appeal. An appeal shall be presumed to be frivolous if:

(1) The applicant applies for an appeal to the commission but fails, without good cause, to appear at the KRS Chapter 13B prehearing, if one is scheduled, or the KRS Chapter 13B hearing before the commission's hearing officer;

(2) 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; or

(3) The appeal is totally lacking in merit such that that it appears to have been taken in bad faith.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2010 at 11 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by May 17, 2010, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the term "frivolous" as it pertains to administrative appeals filed by licensees or other persons participating in Kentucky horse racing.

(b) The necessity of this administrative regulation: The regulation is necessary to define the circumstances under which an appeal will be deemed to be frivolous so that the Kentucky Horse Racing Commission may exercise the rights granted to it by KRS 230.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

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

(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: Licensees or other persons participating in Kentucky horse racing. There are roughly 17,000 persons licensed by the Kentucky Horse Racing Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated increase in cost to the entities described in question (3), although they will become subject to the payment of the Kentucky Horse Racing Commission's costs in defending and appeal if the appeal is deemed to be frivolous.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The stewards, judges, hearing officers and commissioners will have more time to deal with the legitimate appeals and, as a result, will be better able to regulate horse racing in Kentucky.

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

(a) Initially: There is no anticipated increase in cost to the commission.

(b) On a continuing basis: There is no anticipated increase in cost to the commission.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning frivolous appeals apply equally to all licensees or persons participating in horse racing in the Commonwealth of 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? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.320(1), (2), (3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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: The regulation will allow the Kentucky Horse Racing Commission to recoup costs incurred in defending administrative appeals that are deemed to be frivolous.

STATEMENT OF EMERGENCY
811 KAR 2:130E

KRS 230.215 vests the Kentucky Horse Racing Authority with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission. KRS 230.320(1) states that the commission may promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license has been denied, suspended, or revoked or who has been assessed and administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5)(a) allows the commission to determine, in its final order, that an appeal is frivolous. Further, that statute states that if an appeal is frivolous, that fact shall be considered to be an aggravating circumstance and may be considered in assessing any penalty against the licensee, and the licensee or other person who raised the appeal may be required to reimburse the commission for the cost of the investigation of the underlying circumstances of the case and the cost of the adjudication of the appeal. KRS 230.320(5)(b) requires the commission to, by administrative regulation, prescribe the conditions or factors by which an appeal may be determined to be frivolous. This emergency administrative regulation is necessary to define the term "frivolous" as it pertains to KRS 230.320 so that the commission may begin considering the potentially frivolous nature of an appeal as an aggravating circumstance in assessing penalties and recouping the costs in handling such appeals from the party who raised the appeal. At this time, the commission has the statutory authority to enhance penalties and recover costs associated with frivolous appeals but has been unable to do so because the term "frivolous" has not been defined. As a result, the commission has spent thousands of dollars defending appeals that would be considered frivolous under this emergency administrative regulation. It is imperative that it go into effect immediately so that the commission can begin recouping those costs and assessing the proper penalties against persons who file frivolous appeals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

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

811 KAR 2:130E. Frivolous appeals.

RELATES TO: KRS 230.215, 230.225(7), 230.310(2), 230.320, 230.330, EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.320(5), EO 2009-535

EFFECTIVE: March 17, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing Authority with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission. KRS 230.320(1) allows the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license is denied, suspended, or revoked or who is assessed and administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5) allows the commission to determine that certain appeals are frivolous and requires it to, by administrative regulation, prescribe the conditions or factors that would lead to such a determination. This emergency administrative regulation defines the term "frivolous" as it pertains to KRS 230.320(5).

Section 1. Frivolous Appeals. The commission may determine that an appeal is a frivolous appeal. An appeal shall be presumed to be frivolous if:

(1) The applicant applies for an appeal to the commission but fails, without good cause, to appear at the KRS Chapter 13B prehearing, if one is scheduled, or the KRS Chapter 13B hearing before the commission's hearing officer;

(2) The applicant appears at the KRS Chapter 13B hearing but fails, without good cause, to offer evidence at the hearing to sup-

port his application for review; or

(3) The appeal is totally lacking in merit such that that it appears to have been taken in bad faith.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the term "frivolous" as it pertains to administrative appeals filed by licensees or other persons participating in Kentucky horse racing.

(b) The necessity of this administrative regulation: The regulation is necessary to define the circumstances under which an appeal will be deemed to be frivolous so that the Kentucky Horse Racing Commission may exercise the rights granted to it by KRS 230.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

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

(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: Licensees or other persons participating in Kentucky horse racing. There are roughly 17,000 persons licensed by the Kentucky Horse Racing Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated increase in cost to the entities described in question (3), although they will become subject to the payment of the Kentucky Horse Racing Commission's costs in defending and appeal if the appeal is deemed to be frivolous.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The stewards, judges, hearing officers and commissioners will have more time to deal with the legitimate appeals and, as a result, will be better able to regulate horse racing in Kentucky.

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

(a) Initially: There is no anticipated increase in cost to the commission.

(b) On a continuing basis: There is no anticipated increase in cost to the commission.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning frivolous appeals apply equally to all licensees or persons participating in horse racing in the Commonwealth of 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? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.320(1), (2), (3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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: The regulation will allow the Kentucky Horse Racing Commission to recoup costs incurred in defending administrative appeals that are deemed to be frivolous.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

STATE BOARD OF ELECTIONS
(As Amended at ARRS, April 14, 2010)

31 KAR 6:010. State-based administrative complaint procedure.

RELATES TO: KRS Chapter 13B, 117.015(1), 42 U.S.C. 15512

STATUTORY AUTHORITY: KRS 117.015(1)(a), **42 U.S.C. 15512(a)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties in the administration of the election laws. The Help America Vote Act of 2002, 42 U.S.C. 15512, Section 402(a), requires the establishment of a state-based administrative complaint procedure[~~procedures~~] to remedy grievances in elections for federal offices. This administrative regulation establishes an administrative complaint procedure to remedy grievances in elections for federal offices.

Section 1. Definitions. (1) "Board" means the State Board of Elections or their designee as defined in KRS 117.015 and 117.025.

(2) "Complainant" means the person who files a complaint under this administrative regulation.

(3) "Federal election" means a primary, general, or special election at which a federal office appears on the ballot.

(4) "Presiding officer" means the person appointed by the executive director of the board to conduct a hearing on a complaint.

(5) "Respondent" means any state or local election official whose actions are alleged, in a written complaint, to be in violation of Title III of the Help America Vote Act of 2002, 42 U.S.C. 15481.

(6) "State or local election official" means the Secretary of State, the State Board of Elections, a county clerk, a county board of elections, or any officer, agent, or appointee thereof.

(7) "Title III" means Title III of the Help America Vote Act of 2002, Pub.L. 107-252, codified at 42 U.S.C. 15481.

Section 2. Applicability. This administrative regulation shall be applicable to elections for federal office.

Section 3. Complaint Process. (1) Any person who believes there has been a violation of any provision of Title III [~~of the Act~~] by any election official may file a written complaint with the executive director of the board.

(2) All complaints shall:

(a) Be limited to violations of the requirements placed upon the states by Title III, which are limited to claims for violations of the following[~~specifically~~]:

1. Standards for voting systems;

2. Requirements for provisional voting and voting information; and

3. Requirements for computerized statewide voter registration lists and for voters who register by mail.

(b) Be submitted in writing on the Complaint and Affidavit for Violation of Title III of the Help America Vote Act of 2002, and signed by the complainant under oath or affirmation before an officer authorized to administer oaths.

(c) Include the full name, address, and telephone number of the complainant.

(d) Include a description of the alleged violation sufficient to apprise the board and the respondent of the nature and specific allegations[~~specifics~~] of the complaint.

(e) Be sent by mail or by delivery to the Offices of the State Board of Elections at 140 Walnut Street, Frankfort, Kentucky 40601.

(f) Be filed within ninety (90) days of the alleged violation of Title III.

Section 4. Processing the Complaint and Response. (1) The executive director of the board may refuse to accept a complaint if the complaint does not comply with the requirements of Section 3 of this administrative regulation[~~, except the board shall dismiss a complaint that does not state on its face a violation of Title III~~].

(2) If a complaint does not comply with Section 3 of this administrative regulation, the executive director of the board shall, within three (3) days of receipt of the complaint, send the complainant a notice explaining the areas of noncompliance in the complaint.

(3) The complainant shall correct a deficiency within seven (7) **working** days of receipt of notice of the deficiency. If the complainant fails to correct a deficiency or fails to state a violation of Title III, the board shall dismiss the complaint.

(4) If a complaint complies with Section 3 of this administrative regulation and states on its face a Title III violation, the board shall accept the complaint and the complaint shall be deemed filed on the date of receipt at the offices of the board.

(5)[~~(4)~~] Upon receipt of a complaint, the board shall send a copy to the respondent along with a request for a response.

(6)[~~(5)~~] The respondent shall send a response to the board within ten (10) days of the date the respondent received notice from the board of the filed complaint.

(7)[~~(6)~~] Upon receipt of the respondent's response, the board shall within three (3) days, send the complainant a copy of the respondent's response and a notice explaining the complaint may be resolved informally by agreement of the parties or the complainant may request a hearing [~~may be requested~~]. The complainant shall have ten (10) days from the date the notice is received to request an informal resolution or a hearing.

(8)[~~(7)~~] The executive director of the board shall be responsible for arranging the date, time, and place for hearings, and appoint a qualified individual to serve as the presiding officer.

(9) If at any time during the proceedings, the board believes that the person appointed by the executive director of the board is not performing his or her duties as presiding officer in the interest of justice and to ensure the fair administration of **Title III** [~~the Act~~], the board may withdraw the appointment of the presiding officer and appoint another qualified individual to serve as presiding officer.

(10) The executive director shall send a notice of the identity of the presiding officer, time, date, and location of the hearing to the parties at least seven (7) days before the date scheduled for the hearing.

(11) The board shall make a final determination of the complaint within ninety (90) days of the receipt of the complaint, unless the complainant agrees in writing to an extension.

Section 5. Consolidation. Upon its own motion, or upon motion of any party, the [~~(8) The~~] board or presiding officer may consolidate multiple complaints into a single proceeding if there exist common parties, common questions of law or fact, or both, or [~~such~~] other circumstances as justice and the administration of the Act require.[~~ feasible and if the complaints arise out of the same fact situation and have common questions of law and facts.~~

~~(9) The board shall make a final determination of the complaint within ninety (90) days of the date the complaint is filed unless the complainant agrees in writing to an extension.~~]

Section 6. Severance. Upon its own motion, or upon motion of any party, the board or the presiding officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 7.[~~5.~~] Hearings. (1) Hearings shall be conducted in

accordance with KRS Chapter 13B.

(2) Hearings shall be [~~tape~~] recorded. A[~~and a~~] transcript of the hearing shall not be made except upon request of a party who shall bear the cost of transcription. Any other party may request a copy of the transcript at his or her[~~their~~] own expense.

(3) Hearings may be held and testimony taken by teleconference or video conference with notice to the parties.

(4) If any party fails, without good cause, to attend the hearing, they may be held in default and have a determination made against them.

(5) All testimony shall be taken under oath or affirmation.

(6) The complainant shall have the burden of proof.

Section 8. Presiding Officer's Findings of Fact, Conclusions of Law, and Recommended Order.[~~6. Final Determination.~~] (1) Within fourteen (14) days of the completion of the hearing,[~~If~~] the presiding officer shall issue a findings of fact, conclusions of law, and recommended order to the board setting[~~determines that there was a past, present, or potential violation of Title III, shall then the final determination shall set~~] forth any findings of a past, present, or potential[~~the facts of the~~] violation[~~, the specific violation~~] of Title III, if supported by the evidence presented, and [~~provide~~] a recommended remedy.

(2) The recommended remedy [~~awarded~~] shall be directed at the improvement of processes or procedures governed by Title III, consistent with federal and state law.

(3) The recommended remedy [~~provided~~] shall not include money damages, costs, or attorney fees and shall be limited to bringing the election practice or election system referred to in the complaint[~~complained of~~] into compliance with Title III.

Section 9. Final Determination. (1) The board shall review the presiding officer's findings of fact, conclusions of law, and recommended order at the next scheduled meeting of the board.

(2) The board may adopt the presiding officer's findings of fact, conclusions of law, and recommended order as its final determination or issue its own findings of fact, conclusions of law, and final determination based on the evidence presented.

(3) The board shall issue a final determination within thirty (30) days of receipt of the recommended order or within ninety (90) days of receipt of the complaint, whichever is shorter, unless the complainant agrees in writing to an extension of time.

Section 10.[~~Section 7.~~] Alternative Dispute Resolution. (1) If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint, and the complainant did not agree to an extension, then the complaint shall be referred to a review panel comprised of three (3) members of the board.

(2) The review panel shall issue a final determination on the complaint within sixty (60) days of the referral.

(3) The review panel shall make its determination on the record of the hearing conducted under this administrative regulation and shall not conduct any further proceedings.

(4) If the hearing was not conducted or completed, then the review panel shall conduct a hearing under this administrative regulation.

Section 11.[~~8.~~] Publication of Final Determinations. All final determinations shall be posted on the internet homepage of the board, **http://www.elect.ky.gov,** [~~,www.kysos.com/Index/Main/elecdiv.asp,~~] and retained in the permanent archival records of the board by attaching to the minutes of the monthly meeting of the board for the month the final determination was issued.

Section 12.[~~9.~~] Incorporation by Reference. (1) "Complaint and Affidavit for Violation of Title III of the Help America Vote Act of 2002," SBE 21, December 2003[~~(12/03)~~], is incorporated by reference.

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

TREY GRAYSON, Chair

APPROVED BY AGENCY: February 8, 2010

FILED WITH LRC: February 15, 2010 at noon

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

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, April 14, 2010)

102 KAR 1:160. Annuity tables.

RELATES TO: KRS 161.630, [~~161.705,~~] 161.400

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS **161.310 requires the Board of Trustees for the Kentucky Teachers' retirement System to promulgate administrative regulations for the administrative of funds of the retirement system and for the transaction of business.** [~~161.630 provides that a member of the Teachers' Retirement System, retiring for service, may elect the actuarial equivalent of annuity payments provided by KRS 161.620 through choice of an approved optional benefit. In calculating these benefits, a series of actuarial tables are prepared.~~] This administrative regulation establishes the process for adoption of the actuarial tables to be used **if a member of the Kentucky Teachers' Retirement System, upon retirement, elects the actuarial equivalent of annuity payments provided by KRS 161.620 through choice of an approved optional benefit.** [~~for this purpose. Under KRS 161.400, actuarial factors may be approved by the board of trustees without the necessity of an administrative regulation.~~]

Section 1. The annuity values and option factor tables for use in calculating benefits **shall be**[~~are~~] the [~~1983~~] tables prepared by the actuary at the direction of the Board of Trustees and adopted by the Board of Trustees by resolution**, in accordance with KRS 161.400**.

Section 2. Incorporation by reference. (1) "Annuity Table", (2009), is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. [~~The 1983 annuity tables are hereby incorporated by reference. The tables were approved by the Board of Trustees for use effective September 1, 1983. These tables are available for inspection at the Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601.~~]

BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: December 21, 2009

FILED WITH LRC: January 15, 2010 at noon

CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 848-8508.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, February 8, 2010 and April 14, 2010)

200 KAR 5:314. Disclosure of contractor's financial records and information to certain governmental entities.

RELATES TO: KRS 45A.030, 61.870-61.884[~~Chapter 45A~~]

STATUTORY AUTHORITY: KRS 45A.035(2)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035(2)(h) **requires**[~~authorizes~~] the Secretary of the Finance and Administration Cabinet to promulgate this administrative regulation to govern confidentiality of technical data and trade secrets information submitted by actual or prospective bidders or offerors. This administrative regulation establishes requirements which allow governmental oversight agencies to obtain access to the finan-

cial data of state contractors.

Section 1. All state contracts, as defined in KRS 45A.030(7), shall contain the following language: "The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. **Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c).** The contractor also recognizes that any[~~such~~] books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. [~~Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the service".~~]

LORI H. FLANERY,
For JONATHAN MILLER, Secretary
APPROVED BY AGENCY: November 6, 2009
FILED WITH LRC: November 9, 2009 at 2 p.m.
CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, April 14, 2010)

503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.

RELATES TO: KRS **Chapter** 13B, 15.330(1)(f), 15.330(1)(h), 15.380, 15.382, 15.384(1), 15.392, 15.394(1), 15.396(1), 15.3971, 15.400(1), 15.540, 15.565, 15.580
STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.590
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification.

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing. (1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q, and a copy of the proposed job task analysis. The agency shall supply:
(a) The name of the entity that completed the analysis;
(b) The date on which the analysis was completed;
(c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and
(d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.
(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:
(a) Credentials and history of the entity conducting the analysis.
1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.
2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.
3. Number and quality of job task analyses completed.
(b) Methodological approach.
1. Reasonable, standardized format of the study and the report.
2. Relative reliability and validity of the study's sampling techniques and practice.
3. Other considerations that reflect sound practice of the scientific method.
4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.
(3) Initial review.
(a) Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that either:
1. The application has been received and is complete; or
2. The application is incomplete and the specific information which shall be supplemented in order to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned, and the agency shall resubmit an application for consideration of their job task analysis and associated agency testing.
(b) The KLEC office Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests, and the specific reasons supporting a recommendation to reject.
(c) KLEC Review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.
(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:
1. The reasons for the finding; and
2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

Section 2. Agency Testing Procedures. (1) The KLEC office shall receive completed KLEC Form Q or KLEC TeleForm Q from each agency participating in certification as of December 1, 1998 prior to any applicant testing. If an agency initiates participation in certification after December 1, 1998, KLEC Form Q shall be submitted to the KLEC office. The KLEC office shall be notified of any changes in the Form Q process within ten (10) days.
(2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall mail a notification to the agency that either:
(a) The form has been received and is complete; or
(b) The form is incomplete and the specific information which shall be supplemented in order to process the form. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.
(3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The

KLEC office shall mail a notice to the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC, along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Peace Officer Professional Standards Committee shall review the form and the recommendation of the KLEC office and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the form KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected, and the specific reasons supporting the rejection.

(5)(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:

1. With the Secretary of the Justice and Public Safety Cabinet; and

2. Within thirty (30) days of receipt of the notice of rejection.

(b) The notice of appeal shall be submitted:

1. On KLEC Form S; and

2. With a copy of the notice of rejection of agency testing attached.

(c) A copy of the notice of appeal shall be mailed to the KLEC office by certified mail.

(d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of appeal.

(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. Certification of peace officers, telecommunicators, and court security officers. (1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.

(3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunicators, who have completed the Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.

(4) Peace officers, telecommunicators, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.

(5) An agency may request certification for a peace officer that has completed a non-DOCJT law enforcement basic training by submitting KLEC Form B - Basic Training Completed (non-DOCJT) to the KLEC Office.

Section 4. Suitability Minimum Requirements: The following minimum requirements and procedures are established for KLEC testing:

(1) The background investigation as specified in KRS 15.382(12) and 15.3971(k) shall consist of the following minimum requirements, utilizing the KLEC Form H-1 Background Investigation and Form H-2 Personal History Statement:

(a) Biographical history;

(b) Family history;

(c) Education;

(d) Employment history;

(e) Interview with the applicant's references;

(f) Criminal history including domestic violence protective orders; and

(g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the following procedure:

(a) The agency shall submit one (1) completed FD 258 FBI Fingerprint Card to the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check.

(b) The KSP shall forward the results of state and FBI records check to the employing agency.

(c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI.

(d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.

(3) Psychological screening as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d) shall consist of the following minimum requirements:

(a) Screening shall measure a broad spectrum of abilities which are relevant to job related duties, including:

1. Cognitive abilities;

2. Personality characteristics; and

3. Related constructs, including:

a. Integrity;

b. Conscientiousness; and

c. Vocational preference**;**[~~.~~]

(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association;

(c)1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer, telecommunicator, or court security officer**;**[~~.~~]

2. The summary statement shall classify applicants as:

a. "Suitable";

b. "Not suitable"; or

c. Borderline**; and**[~~.~~]

3. If an applicant is classified as borderline or not suitable, the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency; and

(d) Screening shall be administered in accordance with the "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association.

(4) Physical ability testing as specified in KRS 15.382(16) shall consist of the following minimum requirements:

(a) Precertification status.

1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the [~~following~~] events in the following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Testing Protocols**:**[~~.~~]

a. Bench press;

b. Sit-ups;

c. 300 meter run;

d. **Push-ups**[~~Pushups~~]; and

e. One and five-tenths (1.5) mile run.

2. An applicant shall **pass**[~~be considered to have passed~~] the physical ability test for precertification status if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in subparagraph 1 of this paragraph:

a. Bench press, based upon a percentage of the recruit's body weight:

(i) 9 points - Recruit **shall**[~~must~~] bench press at least fifty-five and three-tenths (55.3) percent of body weight;

(ii) 9.5 points - Recruit **shall**[~~must~~] bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;

(iii) 10 points - Recruit **shall**[~~must~~] bench press at least sixty-four (64) percent of body weight;[~~and~~]

(iv) 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and

(v) 11 points - Recruit **shall**[~~must~~] bench press at least seventy-three (73) percent or more of body weight;

b. Sit-ups:

(i) 9 points - Recruit **shall**[~~must~~] complete at least thirteen (13) repetitions **in one (1) minute**;

(ii) 9.5 points - Recruit **shall**[~~must~~] complete at least sixteen

(16) repetitions **in one (1) minute**;

(iii) 10 points - Recruit **shall**[~~must~~] complete at least eighteen (18) repetitions **in one (1) minute**; and

(iv) 11 points - Recruit **shall**[~~must~~] complete nineteen (19) repetitions or more **in one (1) minute**;

c. 300 meter run:

(i) 9 points - Recruit **shall**[~~must~~] complete in sixty-eight (68) seconds or less;

(ii) 9.5 points - Recruit **shall**[~~must~~] complete in sixty-seven (67) seconds or less;

(iii) 10 points - Recruit **shall**[~~must~~] complete in sixty-five (65) seconds; and

(iv) 11 points - Recruit **shall**[~~must~~] complete in less than sixty-five (65) seconds;

d. Push-ups:

(i) 9 points - Recruit **shall complete**[~~must complete in~~] at least fourteen (14) repetitions **in two (2) minutes**;

(ii) 9.5 points - Recruit **shall complete**[~~must complete in~~] at least seventeen (17) repetitions **in two (2) minutes**;

(iii) 10 points - Recruit **shall complete**[~~must complete in~~] at least twenty (20) repetitions **in two (2) minutes**;[~~and~~]

(iv) **10.5 points - Recruit shall complete at least twenty-three (23) repetions in two (2) minutes; and**

(v) 11 points - Recruit **shall**[~~must~~] complete twenty-five (25) repetitions or more **in two (2) minutes**; and

e. One and five-tenths (1.5) mile run:

(i) 9 points - Recruit **shall**[~~must~~] complete in 1,076 seconds **(17.56)**[~~(17:54)~~] or less;

(ii) 9.5 points - Recruit **shall**[~~must~~] complete in 1,054 seconds **(17:34)**[~~(17:26)~~] or less;

(iii) 10 points - Recruit **shall**[~~must~~] complete in 1,032 seconds (17:12) or less;[~~and~~]

(iv) **10.5 points - Recruit shall complete in at least 1,004 seconds (16:44) or less; and**

(v) 11 points - Recruit **shall**[~~must~~] complete in less than 975 (16:15) seconds.

3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.

4. An applicant shall **fail**[~~be deemed to have failed~~] the physical ability test for precertification status if he or she does not achieve at least nine (9) points on each physical training **events**[~~event~~].

5. At the sole discretion of the hiring agency, an applicant that fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, subject to the following:

a. A retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum; and

b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.

6. If an applicant obtains a point value for each event, but does not obtain an overall score of fifty (50), the examinee may attempt the test battery again, in its entirety. This shall be considered a second test administration and not be considered a retest.

7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status in its entirety.

(b) Certification status.

1. To obtain certification status under KRS 15.386(2), the applicant shall successfully complete each of the following physical ability requirements within five (5) days of graduation from law enforcement basic training, which, except for the precertification test score requirements, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols:

a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant's body weight;

b. Sit-ups. Eighteen (18) sit-ups in one (1) minute;

c. 300 meter run in sixty-five (65) seconds;

d. **Push-ups**[~~Pushups~~]. Twenty-five (25) **Push-ups**[~~Pushups~~]; and

e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.

3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status: training graduation test:

a. The applicant shall **not** retest in the failed events[~~no~~] earlier than forty-eight (48) hours after the date the test is originally administered;

b. All failed events shall be retested on the same date; **and**

c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status. [~~Validation of Physical Fitness Standards for the Kentucky Department of Criminal Justice Training, Appendix I - Procedures for Physical Fitness Testing Procedures for Mandatory Physical Fitness Tests, September 25, 1998, Fitness Intervention Technologies:~~

~~1. One and five-tenths (1.5) mile run in seventeen (17) minutes, twelve (12) seconds;~~

~~2. 300 meter run in sixty-five (65) seconds;~~

~~3. Twenty (20) pushups;~~

~~4. One (1) bench press equal to sixty-four (64) percent of the applicant's body weight; and~~

~~5. Eighteen (18) sit ups in one (1) minute.~~

~~(b) If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements.~~

~~(c) If an applicant passes at least one (1) event when participating in the physical ability test in its entirety:~~

~~1. The applicant may retest in the failed events no sooner than forty-eight (48) hours and no later than sixty (60) days from the date of the initial test.~~

~~2. All failed events shall be retested on the same date.~~

~~3. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability minimum requirements.~~

~~4. If the applicant does not pass all previously failed events on the date of the retest, the applicant shall repeat the physical ability test in its entirety and shall not receive credit for events which were passed during previous tests or retests. The applicant may repeat the physical ability test no sooner than forty-eight (48) hours from the date of the retest.~~

~~(d) If an applicant fails all events when participating in the physical ability test in its entirety, the applicant shall repeat the physical ability test in its entirety and shall not receive credit for events which were passed during previous tests or retests.~~

~~(e) An applicant may participate in the physical ability test in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.~~

~~(f) An applicant may participate in one (1) physical ability retest for each physical ability test taken in its entirety.~~]

(5) Medical screening as specified in KRS 15.382(10) shall consist of the following minimum requirements:

(a) The applicant shall complete KLEC Form G-2, Medical History Statement, which along with KLEC Form G-3, Medical Guidelines Implementation Manual, shall be provided to the physician or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.

(b) The agency shall provide the examining physician or physician's assistant with a copy of the KLEC Form T-1a**,**[-]Physician's Medical Release Form.

(c) The physician or physician's assistant shall complete KLEC Form G-1, Medical Examination Report**,** and forward it to the employing agency.

(6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(j), and 15.540(1)(f) shall consist of the following minimum requirements:

(a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened using gas chromatography/mass spectrometry (G.C.M.S.) for the following drugs and thresholds for positive indications:

1. THC (marijuana), 20 ng/ML, 5 GC/MS;
2. Amphetamines, to include Methamphetamine and Methylenedioxymethamphetamine, 300 ng/ML, 100 GC/MS;
3. Cocaine, 150 ng/ML, 50 GC/MS;
4. Opiates, 300 ng/ML, 150 GC/MS;
5. Barbiturates, 200 ng/ML, 100 GC/MS;
6. Phencyclidine (PCP), 25 ng/ML, 25 GC/MS;
7. Methadone, 300 ng/ML, 100 GC/MS;
8. Oxycodone (Oxycontin), 100 ng/ML, 100 GC/MS;
9. Benzodiazepines, 200 ng/ML, 100 GC/MS;
10. Propoxyphene, 300 ng/ML, 200 GC/MS;

(b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening Chain of Custody.

(7) Polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e) shall consist of the following minimum requirements: The applicant shall complete KLEC Form I-1, Polygraph Waiver, and KLEC Form I-2, Polygraph Applicant Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant, utilizing the questions in the KLEC Form I-3**,**[-]Polygraph Test Questions.

(8) The agency shall **ensure**[~~insure~~] that the applicant receives and has read KLEC Form L-1-Code of Ethics and KLEC Form L-2**,** [-]Canon of Ethics.

(9) High school diploma [~~or GED~~].

(a) The **high school graduate**[~~educational~~] requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b) shall be met by:

1. Submission of a copy of a diploma or transcript from a public high school; **or**

2. Submission of a diploma or transcript from a private high school that:

a. Is certified by or recognized by the Kentucky Department of Education; or

b. Has complied with all provisions of Kentucky law relating to private secondary schools, including days and hours of attendance and course curriculum. The applicant shall submit documentary proof of compliance upon request of the KLEC.

(b) A document purporting to be a high school or college diploma and obtained through **the internet or by mail order shall not satisfy**[~~an internet or mail order diploma mill shall not be accepted for purposes of meeting~~] the requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b).

Section 5. KLEC Administered Testing Procedures. (1) An applicant shall execute all releases required for KLEC testing, including:

(a) KLEC Form I-1 - Consent for Preemployment Polygraph Examination;

(b) KLEC Form K-1 - Drug Screening Applicant Consent Form;

(c) KLEC Form T-1 - Medical Release - Phase I Testing; and

(d) KLEC Form T-2 - Health Confirmation - Phase I Testing.

(2) Testing schedule.

(a) The KLEC office shall mail to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.

(b) Testing sites shall be statewide and accommodations shall be made where reasonable to **ensure**[~~insure~~] testing sites are accessible based upon need.

(c) Advance notice of the schedule shall be made public prior to the testing.

(d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.

(3) Registration for KLEC administered testing. The KLEC office shall receive KLEC **Forms**[~~Forms~~] A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification when the testing is administered.

(b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.

Section 6. Test Reporting by KLEC. (1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The information from the completed form shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(3) Length of test result validity.

(a) Physical ability for precertification status:[:] results shall be considered current and valid one (1) year from the passing date of the test.

(b) Suitability screening: results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.

(c) Polygraph examination: results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening: results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant that leaves and reenters the testing process for preselection screening shall[~~be required to~~] submit to another drug screening.

(4) Updating test results. **The employing agency shall**[~~It shall be the responsibility of the employing agency to~~] update test results if necessary by submitting KLEC Form D to the KLEC office.

(5) Agency access to prior test results.

(a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing which is still current and valid.

(b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability, and polygraph results directly from the agency that **initially**[~~initial~~] requested testing of the applicant.

(c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. Test Reporting by Agency. (1) An agency that performs physical ability testing based upon the requirements in Section 4[~~(4)(a)~~] of this administrative regulation shall report all test results by submitting a Form PT-1**,**[-] Physical Ability Test Session Report**,** to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.

(3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:

(a) Passes or fails the test; or

(b) Performs or completes every component of the physical ability test.

Section 8. KLEC Administered Testing Costs. (1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

(a) Sixty-five (65) dollars for each psychological screening;

(b) $100 for each polygraph examination; and

(c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:

1. The actual approved budget of the governmental unit for the current and the preceding year;

2. The number of certification applicants for the current and preceding year;

3. The actual revenue receipts of the governmental unit for the current and the preceding year; and

4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that **adequate**[~~inadequate~~] funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application the KLEC office shall mail a notification to the agency that either:

1. The application has been received and is complete; or

2. The application is incomplete and the specific information which shall be supplemented in order to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC, along with a recommendation to approve or reject the application for financial hardship, and the specific reasons supporting a recommendation to reject.

(d) KLEC review.

1. The KLEC Committee on Certification shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.

2. Within sixty (60) days of their receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected, and the specific reasons supporting the rejection.

(e) Appeal.

1. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.

2.The notice shall be filed within thirty (30) days of receipt of the notice of rejection.

3. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached.

4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail, to the following address, Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.

5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOCJT.

Section 9. Employment Changes. (1) Pursuant to KRS 15.392 and 15.580 **if**[~~when~~] a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the employment or appointment.

(3) Information from completed KLEC Forms F shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

Section 10. Out-of-state, military, and federal law enforcement and telecommunications basic training. (1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was equal to or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers when the course was completed by the applicant**, as determined by the executive director of the KLEC**;

(b) The basic training course or academy is a single, stand alone course; and

(c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and

(d) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:

1. The twenty-four (24) hour legal update Penal Code course;

2. The sixteen (16) hour legal update constitutional procedure course;

3. The forty (40) hour Homeland Security Course; and

4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:

a. Basic officer skills;

b. Orientation for new police chiefs; or

c. Mandatory duties of the sheriff.

(2) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a) The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, as determined by the Executive Director of the KLEC; and

(b) The basic training course or academy was a single, stand-alone course.

(3) An applicant to a Kentucky law enforcement agency who has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:

(a) Federal Bureau of Investigation;

(b) Bureau of Alcohol, Tobacco, and Firearms;

(c) Drug Enforcement Administration; or

(d) United States Secret Service.

(4)[~~.~~

~~(2)~~] The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

(5)[~~(3)~~] An agency may request certification for a peace officer that has completed an out-of-state law enforcement basic training by submitting KLEC Form B[-] Basic Training Completed (non-DOCJT), to the KLEC Office.

Section 11. Records. (1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the Records Retention Schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to **ensure**[~~insure~~] their security. In order to properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall:

(a) Keep all records relating to certification in a file separate from any personnel file maintained by the hiring authority; and

(b) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, [“]Certification of Peace Officer Professional Standards Testing Procedures,[”]

indicating that the following testing procedures have been completed:

1. Polygraph;
2. Suitability screening;
3. Drug screen; and
4. Medical examination or history statement.

(3) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(4) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

Section 12. Applicant Conduct and Behavior. (1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with **KRS**[~~KRC~~] Chapter 13B, may **be** barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.

(c) An applicant shall not participate in physical ability testing if:

1. The applicant has taken:

a. A controlled substance as prescribed by a physician; or

b. Any other medication, whether prescribed or not; and

2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) A copy of KLEC Form R shall be mailed to the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing, the supporting reasons and circumstances of the removal, and whether the agency may reschedule testing.

Section 13. Compliance. (1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, in order to audit specific applicants and agencies to **ensure**[~~assure~~] compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in **Kentucky Law Enforcement Foundation Program Fund (KLEFPF)**[~~KLEFPF~~]. If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association;

(b) KLEC Form A - Testing Registration - Attesting to Minimum Standards, (May 2007 edition);

(c) KLEC Form B - Basic Training Completed (non-DOCJT), revised 1/19/99;

(d) KLEC Form C - Grandfather Information, (July 2006 edition);

(e) KLEC Form D - All Standards Met, (May 2007 edition);

(f) KLEC Form E - Request for Certification for Exempt Officers, revised 1/19/99;

(g) KLEC Form F - Status Update (July 2008 edition);

(h) KLEC Form G-1 - Medical Examination Report, (June 19, 2001 edition);

(i) KLEC Form G-2 - Medical History Statement, (July 1, 2001 edition);

(j) KLEC Form G-3 - Medical Screening Guidelines Implementation Manual, (July1, 2001 edition);

(k) KLEC Form H-1 - Background Investigation, (June 2001 edition);

(l) KLEC Form H-2 - Personal History Statement, revised 1/19/99;

(m) KLEC Form I-1 - Consent for Preemployment Polygraph Examination, (July 2007 edition);

(n) KLEC Form I-2 - Pre-employment Polygraph Questionnaire, (June 2007 edition);

(o) KLEC Form I-3 - Polygraph Test Questions, (July 2006 edition);

(p) KLEC Form J - JTA Submission, revised 1/19/99;

(q) KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form, (July 2006 edition);

(r) KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form, (July 2006 edition);

(s) KLEC Form L-1 - Code of Ethics, (July 1, 2001 edition);

(t) KLEC Form L-2 - Canon of Ethics, (July 1, 2001 edition);

(u) KLEC Form Q - Agency Submission Form, (October 2006 edition);

(v) KLEC Form Q-3 - Drug Screening Approval, (July 2006 edition);

(w) KLEC Form Q-4 - Polygraph Approval, (July 2006 edition);

(x) KLEC Form Q-5 - Psychological Examination Approval, (July 2006 edition);

(y) KLEC Form Tele-Q - Agency Submission Form, (July 2006 edition);

(z) KLEC Form R - Removal from Testing, revised 1/19/99;

(aa) KLEC Form S - Notice of Appeal, revised 1/19/99;

(bb) KLEC Form T-1 - Medical Release - Phase I Testing, (July 2001 edition);

(cc) KLEC Form T-1a - Physician's Medical Release Form - (July 2001 edition);

(dd) KLEC Form T-2 - Liability Waiver - Phase I Testing, (July 2001 edition);

(ee) POPS Form PT-1 - Physical Ability Test Session Report, (1/03 edition); [~~and~~]

(ff) POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures, (7/04 edition); and

(gg) KLEC Physical Fitness Testing Protocols, (12/09 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council Office Funderburk Building, Eastern Kentucky University, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH CAIN, Chair

APPROVED BY AGENCY: January 5, 2010

FILED WITH LRC: January 5, 2010 at 2 p.m.

CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102,

phone (859) 622-3073, fax (859) 622-5027.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(As Amended at ARRS, February 8, 2010 and April 14, 2010)

601 KAR 1:220. Theft of motor fuel; procedures to obtain motor vehicle record.

RELATES TO: KRS 61.874(3), 187.310, 411.402, 411.406; 18 U.S.C. 2721

STATUTORY AUTHORITY: KRS 411.406**(1)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 411.406**(1)** requires the cabinet to promulgate administrative regulations to implement procedures by which a motor fuel retailer or association of motor fuel retailers may obtain the name and mailing address of a vehicle owner who has been identified as having committed an offense under KRS 411.402. This administrative regulation establishes the procedures by which a motor fuel retailer or association of motor fuel retailers may obtain the name and mailing address of a vehicle owner who has been identified as having committed an offense under KRS 411.402.

Section 1. Procedures for Obtaining Motor Vehicle Record. (1) A motor fuel retailer or association of motor fuel retailers who wish to obtain **information pursuant to KRS 411.406(1) shall submit a notarized Request for Personal Information Pursuant to KRS 411.402 and 411.406 Theft of Motor Fuel, Form TC 96-16B, to the Department of Vehicle Regulation, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622.**

(2) Except as provided in an agreement made pursuant to KRS 411.406(1), the fee for motor fuel theft information shall be three (3) dollars per report.[~~the name and mailing address of a vehicle owner who has violated KRS 411.402 shall submit a notarized Request for Motor Vehicle Record That Includes Personal Information, Transportation Cabinet Form 96-16 and ten (10) dollars to the Department of Vehicle Regulation, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622 for each request for information.~~]

Section 2. Incorporation by Reference. (1) **"Request for Personal Information Pursuant to KRS 411.402 and 411.406 Theft of Motor Fuel", March 2010, is incorporated by reference.**[~~Form TC 96-16, "Request for Motor Vehicle Record That Includes Personal Information", November 2009, is incorporated by reference.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Regulation, Division of Motor Vehicle Licensing, Second Floor, Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8a.m. to 4:30 p.m.

MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: December 14, 2009

FILED WITH LRC: December 15, 2009 at 10 a.m.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(As Amended at ARRS, April 14, 2010)

603 KAR 4:045. Cultural and recreational supplemental guide signs and boundary signs.

RELATES TO: KRS **189.010(4),** [~~177.037,~~] 189.337, 23 C.F.R. 1.23, 23 U.S.C. 162[~~Subpart F~~]

STATUTORY AUTHORITY: KRS [~~177.037,~~] 189.337(2), 23 U.S.C. 162

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.337(2) [~~and 177.037~~] **requires**[~~authorize~~] the Transportation Cabinet to promulgate standards and specifications for the uniform system of traffic control devices. This administrative regulation sets forth standards to be used in the erection and maintenance of cultural and recreational supplemental guide signs [~~and boundary signs~~].

Section 1. Definitions. (1) "Adventure tourism" means an activity designed for participatory outdoor recreational activities that involves at least two (2) of the following:

(a) Outdoor physical activity such as horseback riding, kayaking, spelunking, bicycling, and hunting;

(b) A cultural or recreational outdoor activity; or

(c) Engagement with nature such as wildlife viewing and nature study.[~~"Boundary" means the official beginning or end of any political subdivision, national scenic byway that is recognized by a state or national publication including but not limited to maps and getaway guides.~~]

(2) [~~"Boundary sign" means a sign placed on or off right-of-way that marks the boundaries of a city, town, community, unincorporated urban place, or national scenic byway and may include events or accomplishments important to that area and may also honor the birthplace of a person important to that area.~~

~~(3)~~] "Clear zone" means the area between the edge of the driving-lane of a public road and an imaginary line running parallel to the road a certain distance from the edge of the traveled way as specified by the AASHTO Roadside Design Guide.

(3)[~~(4)~~] "Cover" means a protective shield over a cultural and recreational supplemental guide sign which prohibits viewing of the sign.

(4)[~~(5)~~] "Cultural and recreational supplemental guide sign " means an official sign placed within the highway right-of-way with one (1) attraction message.

(5)[~~(6)~~] "Cultural or recreational" means a public or private activity that[~~which~~] provides to the traveling public a tourist attraction[~~.~~] or a cultural, historical, recreational, agricultural, educational, or entertainment activity[~~cultural or recreational activity to the traveling public~~].

[~~(7) "Cultural or recreational activity" means a cultural, historical, recreational, agricultural, educational or entertainment activity.~~

~~(8) "Department" is defined by KRS 189.010(1).~~]

(6)[~~(9)~~] "Eligibility distance" means the distance from the location of the entrance driveway of the activity to the point where the information panel is located [~~to the entrance driveway to the activity~~].

(7)[~~(10)~~] "Illegal sign" means an advertising device that[~~which~~] has been determined by the Transportation Cabinet to be illegal as established in[~~according to the provisions of~~] 603 KAR 3:080.

(8)[~~(11)~~] "Information panel" means one (1) to a maximum of four (4) cultural and recreational guide signs.

(9)[~~(12)~~] "Intersection" is defined by KRS 189.010(4).

(10)[~~(13)~~] "Interstate or parkway" means a highway that has fully-controlled access and is part of the National Interstate and Defense System of Highways or is now, or once was, a toll road.

(11)[~~(14)~~] "MUTCD" means the Federal Highway Administration's ["]Manual on Uniform Traffic Control Devices["] incorporated by reference in 603 KAR 5:050.

(12) "Pictograph" means a pictorial representation used to identify a governmental jurisdiction, a governmental agency, a military base or branch of service, a government approved university or college, a toll payment system, or a government approved institution. For purposes of this administrative regulation only, a "pictograph" **is**[~~shall be restricted to~~] an official symbol adopted by a state or federal governmental agency to designate an activity of cultural, recreational, or historic interest that **is**[~~shall~~] be placed on the opposite side from the directional arrow on a cultural and recreational sign.

(13)[~~(15)~~] "Public road" means a[~~all~~] state-maintained road other than an interstate or parkway[~~roads other than interstate and parkways~~].

(14)[~~(16)~~] "Ramp" means the on- or off-access road from an interstate highway or parkway to or from the first public road.

(15)[~~(17)~~] "Temporary agritourism site" means a seasonal,

agricultural-related tourism activity held on a working farm.

(16)[~~(18)~~] "Trailblazing" means to provide directional guidance to a particular cultural or recreational site from other highways in the vicinity.

(17) "Themed trail" means any roadway where a significant portion of the roadway that has a beginning and ending point and contains sites providing interconnected experiences of a historic, cultural, or educational nature, follows the route directly correlated to the historic, cultural or educational events or activities and includes historic, cultural, or educational sites that are consistent with the theme of the trail.

(18) "Trail site" means a beginning, ending, or access point adjacent to a primary or secondary roadway providing access to opportunities for off-road activities that are pertinent to nonmotorized and motorized vehicle use, including access to pedestrians, bicycles, mountain bicycles, boats, horses, all-terrain vehicles (ATVs), or off-highway vehicles (OHVs), on designated lands and waters in Kentucky.

Section 2. General Provisions. The Department of Highways shall control the erection and maintenance of cultural and recreational supplemental guide signs in accordance with the MUTCD and this administrative regulation.

Section 3. Applications and Contracts for Cultural and Recreational Supplemental Guide Signs. (1) An applicant **shall submit the appropriate forms from the Cultural and Recreational Forms Packet that includes Tourist Signage Program Application, TC Form 99-201; Temporary Agritourism Site Application, TC Form 99-202; Attraction Eligibility Information, Form TC 99-203; Signing Incentives Program Application, TC Form 99-204; and Encroahment Permit, TC Form 99-1E, to the Transportation Cabinet, Division of Maintenance** for the following supplemental guide signs:

(a) [~~application for~~]Cultural and recreational;

(b) Themed trail; **or**

(c) Adventure tourism; and

(d) Temporary agritourism [~~supplemental guide signs~~] Shall submit the appropriate forms from the Cultural and Recreational Forms Packet that includes Tourist Signage Program Application, TC Form 99-201; Temporary Agritourism Site Application, TC Form 99-202; Attraction Eligibility Information, Form TC 99-203; Signing Incentives Program Application, TC Form 99-204; and Encroachment Permit, TC Form 99-1E, to the Transportation Cabinet, Division of Maintenance.

(2) The Division of Maintenance shall submit the completed forms from the Cultural and Recreational forms packet to the Transportation-Tourism Interagency Committee for review and approval or denial [~~be made to the Department of Highways by the city or community preparing the signage program~~].

(3) An application for a pictograph shall be reviewed by the Division of Maintenance Permits Branch and the Director of Adventure Tourism for the Tourism Arts and Heritage Cabinet who shall each make a recommendation to approve or deny the application to the Transportation-Tourism Interagency Committee.

(4)[~~(2)~~] An application for temporary agritourism sites[~~sties~~] shall be approved or denied by the Kentucky Department of Agriculture pursuant to 302 KAR 39:010.

Section 4. Information Panels for Cultural and Recreational Supplemental Guide Signs. (1) General requirements for information panels.

(a) The information panels shall be located to:

1. Take advantage of natural terrain;

2. Have the least impact on the scenic environment; and

3. Avoid visual conflict with other signs within the highway right-of-way.

(b) Information panels for cultural and recreational supplemental guide signs shall not be erected:

1. On interstates or parkways;

2. On the on ramp or off ramp of an interstate or parkway except in conjunction with Limited Supplemental Guide Signs;

3. Where there is insufficient space to locate both other traffic control devices and the information panels; or

4. So that the traffic is directed onto an interstate or parkway.

(c) Unprotected information panel supports located within the clear zone shall be of a breakaway design.

(d) An information panel may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right-of-way.

(e) The location of any other traffic control device shall at all times take precedence over the location of an information panel.

(f) A cultural and recreational activity shall have trailblazing from the source to the activity or destination.

(2) Intersection approach information panels.

(a) An information panel shall be placed[~~panels may be erected~~] on the approach to an intersection on a public road.

(b) Except as provided in paragraph (g) of this subsection, each intersection approach information panel shall be located at least 200 feet from the intersection.

(c) Except as provided in paragraph (g) of this subsection, an intersection approach information panel shall be spaced at least 200 feet from any other traffic control device including another intersection approach information panel.

(d) A separate information panel shall be installed for each of the directions of traffic on an approach to an intersection at which a cultural and recreational supplemental guide sign[~~signs~~] will be placed for the identification of a cultural and recreational activity[~~activities~~]. The directions of traffic and the order of placement for separate information panels shall be[~~are~~] the following:

1. A left turn;

2. A right turn; and

3. No turn, if the activity or attraction is located ahead and if allowed by the provisions established[~~set forth~~] in Section 6 of this administrative regulation.

(e) [~~In the direction of traffic, the order of placement for separate information panels shall be for facilities to the left, to the right and straight ahead.~~

~~(f)~~] If the "AHEAD" legend is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, but it shall not obstruct the driver's critical viewing of other traffic control devices.

(f)[~~(g)~~] The spacing requirements established[~~set forth~~] in paragraphs (b) and (c) of this subsection may be waived by the State Highway Engineer's Office if, based on sound engineering judgment, it is determined that the intersection can safely accommodate the reduced spacing.

Section 5. Cultural and Recreational Supplemental Guide Sign Design and Composition. (1) Each cultural and recreational supplemental guide sign shall:

(a) Be rectangular in shape;

(b) Have a white legend and border on a brown background;

(c) Have reflective legends, arrows, backgrounds, and borders; and

(d) Contain the name of the attraction in not more than two (2) lines of legend **that**[~~which~~] shall not include promotional advertising.

(2) Each cultural and recreational supplemental guide sign on an intersection approach information panel shall have:

(a) A separate directional arrow as set forth in Section 2D-8 of the MUTCD;

(b) [~~The distance to the activity or attraction may be shown beneath the arrow;~~

~~(c)~~] Arrows pointing to the right at the extreme right of the cultural and recreational supplemental guide sign; and

(c)[~~(d)~~] Arrows pointing to the left or up at the extreme left of the cultural and recreational supplemental guide sign.

(3) A cultural and recreational supplemental guide sign may have the distance to an activity or attraction depicted beneath the arrow.

(4) Advance information panels.

(a) Advance information panels shall[~~may~~] be installed only in situations where sight distance, intersection vehicle maneuvers, or other vehicle operation characteristics require advance notification of the attraction to reduce vehicle conflicts and improve highway safety.[~~;~~]

(b) The last of the advance information panels to be driven past shall be located at least one-half (1/2) mile (eight-tenths (0.8) kilometers) from the intersection.[;]

(c) The arrangement of the cultural and recreational supplemental guide signs on the advance information panel shall be the same as the arrangement on the intersection information panel except the directional arrows and distance shall be omitted.

(d) The appropriate legend "NEXT RIGHT", "NEXT LEFT", or "AHEAD" in letters of the same size as legends shall be placed on the cultural and recreational supplemental guide sign.

(e) The legend "RIGHT X MILE", "LEFT X KILOMETERS", or similarly worded legend may be used if there are intervening minor roads.

(5)[(4)] There shall not be more than four (4) cultural and recreational supplemental guide signs installed on a single information panel.

(6)[(5)](a) Cultural and recreational supplemental guide signs shall be arranged vertically on the information panels.

(b) An information panel [Information panels] shall be located so that the right turn signs are closer to the intersection. If no more than four (4) cultural and recreational supplemental guide signs are to be installed on an intersection approach information panel, the cultural and recreational supplemental guide signs may be combined on the same information panel with the cultural and recreational supplemental guide sign for left turns placed above the cultural and recreational supplemental guide signs for right turns.

(7)[(6)] The standard lettering for cultural and recreational supplemental guide signs shall be capital letters, six (6) inches in height[in upper case letters] of the type provided in ["]The Standard Alphabets for Traffic Control Devices[Highway Signs" book published in 1966 by the U.S. Department of Transportation. Capital letters shall be six (6) inches in height].

(8)[(7)](a) A cultural and recreational supplemental guide sign shall not exceed seventy-two (72) inches wide and eighteen (18) inches tall.

(b) The cultural and recreational supplemental guide signs on the same information panel shall all be the same width.

(c) The directional arrow with the distance to the activity or attraction underneath shall not exceed twelve (12) inches wide and sixteen (16) inches tall.

(d) There shall be a one (1) inch white border surrounding the sign and separating the directional arrow and legend.

(e) There shall be a one (1) inch spacing between the border and legend and two (2) inch spacing between lines of legend.

(f) The maximum length of the legend shall be five (5) feet and four (4) inches per line.

(g) In areas of reduced speeds or forty-five (45) mph or less the size of the cultural and recreational supplemental guide signs and lettering shall be set by the State Highway Engineer's Office, considering the location and terrain of the area as based on sound engineering judgment.

(9)[(8)] Clearance of panels should be governed by Sections 2A and 2D of the MUTCD.

Section 6. Ahead Signing. (1) The legend "AHEAD" may be used in lieu of the up directional arrow as established[set forth] in Section 5(2)(d) of this administrative regulation.

(2) Signing for cultural and recreational activities in the "AHEAD" direction shall be considered only under the following circumstances:

(a) There is signing for a similar facility in either the right or left direction;

(b) Through traffic is not the normal traffic pattern; or

(c) The visibility of the establishment is obscured until a motorist is within 800 feet of the entrance.

Section 7. Cultural and Recreational Activity Eligibility. A cultural and recreational activity shall meet the following requirements to qualify for cultural and recreational signing. A cultural and recreational supplemental guide sign shall not be erected until the activity or site has been approved in accordance with this administrative regulation.

(1) The activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(2) Approval shall not be granted if the cultural and recreational activity is using an illegal sign at a[any] location in the Commonwealth of Kentucky.

(3) [Each activity shall comply with all applicable local, state, and federal statutes and administrative regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin. Each activity identified on a cultural and recreational supplemental guide sign shall provide assurance of its conformance with all applicable federal, state or local laws and administrative regulations. If a cultural and recreational activity is in noncompliance of any of these laws or administrative regulations, it may be considered ineligible for participation in this program and its signs may be removed.

(4)] The activity shall be conducted in an appropriate building or area.

(a) The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate and well-marked entrance or the cultural and recreational activity is a bed and breakfast lodging.

(b) The building or area shall be maintained in a manner consistent with standards generally accepted for that type of attraction or activity.

(4)(a) An[(5) Any] activity that[which] operates on a seasonal basis or is closed in excess of thirty (30) days shall make provisions to remove or cover the activity's sign during the off season.

(b) The Transportation Cabinet shall be notified at least thirty (30) days before the opening or closing occurs [and proper arrangements made to remove or cover the sign or signs].

(5)[(6)] A cultural and recreational supplemental guide sign shall not be displayed if it may[which would] misinform the traveling public or is unsightly, badly faded, or in a state of dilapidation. In these instances, the attraction shall make arrangements for a new cultural and recreational sign.

(6)[(7)] The Transportation Cabinet shall not be responsible for business lost due to cultural and recreational guide signs or information panels that are[becoming] temporarily out of service.

(7)[(8)] The display of the activity on the cultural and recreational supplemental guide sign shall not be considered an endorsement or recommendation by the Commonwealth[state] of Kentucky on behalf of the cultural and recreational activity.

(8) Except as provided in subsection (9) of this section,[(9)] to qualify for a cultural and recreational supplemental guide sign, an attraction or activity shall:

(a)1. Be open a minimum of eight (8) hours a day, five (5) days a week, one (1) of which is a weekend, any time the sign is displayed or receives a waiver from the Transportation-Tourism Interagency Committee using the criteria for the Cultural Heritage Site Certification Program.

2. Temporary agritourism sites shall be open a minimum of six (6) hours a day, five (5) days a week, one (1) of which is a weekend;

(b) Have adequate parking on site or nearby for the facility;

(c) Meet[Meets] the criteria established[set forth] in the Cultural Heritage Site Certification[Certified Sites] Program if it is a permanent activity and a cultural heritage certified site;[.]

(d) Be listed on or eligible for listing on the National Register of Historic Places if the cultural and recreational activity is an historic site; and

(e)1. Have an eligibility distance of twenty (20) miles or less from a major roadway.

2. If there is a corresponding limited supplemental guide sign, the eligible distance shall be fifty (50) miles or less.

(9) An Adventure Tourism or Themed Trail Location shall qualify for a cultural and recreational supplemental guide sign if:

(a) The attraction is open for public use during daylight hours;

(b) The site or trail is clearly identified;

(c) The rules for public use are prominently displayed or available on site;

(d) There is adequate parking and sufficient space for loading and unloading; and

(e)1. The site is located twenty (20) miles or less from a major roadway.

2. If there is a corresponding limited supplemental guide sign,

the eligible distance shall be fifty (50) miles or less.

Section 8. Changes. A change[~~Any changes~~] to the original approved permit application[~~set of signs~~] as it relates to the location or approved activities shall be sent to the Division of Maintenance Permits Branch for review[~~permitted by the Transportation Cabinet according to criteria set forth in Section 7 of this administrative regulation~~].

Section 9. Measurements. Measurements taken to determine the qualification for a cultural and recreational supplemental guide sign shall be measured from the center line of all highways. This measure shall be from the entrance driveway of the activity to the point where the directional signs are located.

Section 10. Agritourism. (1) Advertising devices for temporary agritourism sites approved by the Kentucky Department of Agriculture pursuant to 302 KAR 39:010 may be placed off-premise and off the right-of-way on temporary nonbillboards.

(2) There shall be only one (1) sign erected on a road in each direction of travel.

(3) The signs may be placed two (2) weeks prior to the start of an event and shall be removed within forty-eight (48) hours after the event is concluded.

Section 11. [~~Permits. The city or local community wishing to install cultural and recreational supplemental guide signs shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each information panel proposed to be erected, changed or removed from the state-owned right-of-way.~~

~~Section 12. General Provisions for Boundary Signs. (1) Pursuant to KRS 177.037(3), in making its recommendations regarding the location of a boundary sign, the Transportation Cabinet shall recommend that:~~

~~(a) Boundary signs may be placed on the right-of-way if the entire sign is located beyond the clear zone; and~~

~~(b) Boundary signs shall be located off the right-of-way if insufficient right-of-way exists to provide a safe and convenient travelway for motorists and with permission of the property owner. The Transportation Cabinet shall use the AASHTO publication, "The Roadside Design Guide" to make this determination.~~

~~(2) Boundary signs shall not be more than 200 square feet and may include a welcome message in addition to any other message as permitted by KRS 177.037. The appropriate Transportation Cabinet, Department of Highways District Office shall advise the person requesting the sign as to the number and size that will properly fit within the right-of-way as necessary for the subject area.~~

~~(3) The Transportation Cabinet shall install these signs upon written request from the official governing body of the city, town, community, unincorporated urban place, or national scenic byway if the recommendations of the Transportation Cabinet, pursuant to subsection (1) of this section, are followed. The Transportation Cabinet shall invoice the appropriate governing body.~~

~~(4) If more than one (1) city, town, community, unincorporated urban place, or national scenic byway requests the same general area for a sign or group of signs, the community shall have preference. These signs shall be limited to one (1) per direction of travel per roadway for entering and one per direction of travel per roadway for leaving the area.~~

~~(5) Boundary signs for a city or an unincorporated urban place may include sports accomplishments and other events important to the area and may also honor the birthplace of a person important to the area.~~

~~(6) Upon completion of installation of a boundary sign, all existing signs that have been placed by the Transportation Cabinet to commemorate a similar message or events shall be removed, at the expense of the city, town, community, unincorporated urban place, or national scenic byway. If a city, town, community, unincorporated urban place, or national scenic byway has placed signs on or off the right-of-way that are similar in nature, they shall be removed or incorporated into the new signs.~~

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

(a) [~~AASHTO publication,~~] "The Roadside Design Guide", [{]3rd Edition 2006, with updated Chapter 6, AASHTO[}];

(b) [~~TC99-1E~~] "Encroachment Permit", TC Form 99-1E, February 2010[~~(10/01 Edition), Transportation Cabinet~~];

(c) "Standard Alphabets for Traffic Control Devices[~~Highway Signs~~]", [{]2004 Edition[}], U.S. Department of Transportation;

(d) Cultural Heritage Site Certification[~~Certified Sites~~] Program, **April 2010**[~~Guide~~]"; [~~and~~]

(e) "Tourist Signage Program Application", TC Form 99-201, May 2009;

(f) "Temporary Agritourism Site Application", TC Form 99-202, **April 2010**[~~May 2009~~];

(g) "Attraction Eligibility Information", TC Form 99-203, May 2009;

(h) "Signing Incentives Program Application", TC Form 99-204, February 2010.[~~"Standard Highway Signs", (2004 Edition), U.S. Department of Transportation.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, Division of Maintenance[~~Traffic Operations~~], 200 Mero Street, Third Floor, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN K. WADDLE, State Highway Engineer
MIKE HANCOCK, Acting Secretary
APPROVED BY AGENCY: February 12, 2010
FILED WITH LRC: February 12, 2010 at 4 p.m.
CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Licensing
(As Amended at ARRS, April 14, 2010)

811 KAR 1:070. Licensing standardbred racing.[~~Licensing; owners, drivers, trainers, and grooms.~~]

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

STATUTORY AUTHORITY: KRS 30.215(2), **230.225, 230.240**(2), 230.260, 230.290(2), 230.310(1)[~~230.260~~]

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

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

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

Section 2. Persons Required to be Licensed. (1) A person shall not participate in pari-mutuel racing under the jurisdiction of the

commission without a valid license issued by the commission pursuant to KRS 230.310.

(2) An owner, **trainer**, owner/trainer, **driver, driver/trainer** [~~owner/driver~~], owner/trainer/driver, **and owner/driver** [~~trainer, driver, and driver/trainer,~~] shall also have a valid license issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in order to participate in pari-mutuel racing in Kentucky.

(3) Categories of licenses issued by the commission shall include [~~the following~~]:

(a) Racing participants and personnel including [~~the following~~]: owner, **trainer, owner/trainer, driver, driver/trainer, owner/trainer/driver, veterinarian, owner/driver, matinee driver, farrier, veterinary technologist or technician, veterinary assistant, farm manager or agent, mutual clerk, vendor, occupational employee, stable employee, equine therapist, and any employee listed in Section 6 of this administrative regulation;** [~~owner/trainer, owner/driver, owner/trainer/driver, driver/trainer, authorized agent, trainer, assistant trainer, driver, farm manager or agent, veterinarian, veterinary technologist or technician, veterinary assistant, equine health professional, farrier, vendor, mutuel clerk, stable employee, occupational, special event and any employee listed in Section 5 of this administrative regulation.~~]

(b) Racing officials;[~~.~~]

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

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

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

(f) Commission members.

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

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

(6)(a)[~~(5)~~] A person required to be licensed shall submit:

1. A completed written application on the form "Licensing Application", KHRC 25-01 **(03/10) or the multi-jurisdictional license form pursuant to Section 8** [~~(01/10), or forms pursuant to Section 7~~] of this administrative regulation; **and**

2. [~~, along with~~] The fee required by Section **6**[~~5~~] of this administrative regulation.

(b) A temporary license may be obtained by an authorized representative of an owner in accordance with Section **18**[~~17~~] of this administrative regulation.

(c) A conditional license may be issued by the commission or its designee upon submission of a written application.

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

(2)**(a)** An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force.

(b) An application shall be submitted **no** [~~not~~] later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section **18** [~~17~~] of this administrative regulation.

(c) The license application shall be reviewed and the license issued by commission personnel.

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

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

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

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

(6) The commission shall provide notice to an applicant that the license has been issued **or**[~~,~~] denied[~~, or refused~~]. If all requirements for licensure are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for **Driver's License** [~~Specific Licenses~~]. (1) [~~Driver.~~] A person desiring to drive a harness horse at a race meeting licensed by the commission shall obtain a license from:

(a) The commission; and

(b) The United States Trotting Association, Standardbred Canada, or an appropriate international harness racing governing agency.

(2) **Commission licenses. A driver's license from the commission shall be issued in one the following categories:**

(a) A qualifying-fair (QF) license which shall be valid for fairs, matinees, qualifying races, and if approved by the presiding judge, nonwagering races at extended pari-mutuel meetings;

(b) A provisional (P) license which shall be valid at fairs, matinees, qualifying races, and extended pari-mutuel meetings; or

(c) A full (A) license which shall be valid at all race meetings.

(3) License advancement. An applicant shall initially obtain a qualifying-fair license. Advancement to a provisional license and a full license shall be determined by Rule 17, Sections 1 through 10, of the United States Trotting Association, 2009/2010.

(4) General qualifications. An applicant for a driver's license shall:

(a)1. Be at least sixteen (16) years of age for a (QF) license;

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

3. Not be denied a driver's license solely on the basis of age if the applicant has previously held any type of license; and

(b) Submit satisfactory evidence of an eye examination indicating:

1. 20/40 corrected vision in both eyes; or

2. If one (1) eye is blind, at least 20/30 corrected vision in the other eye.

Section 5. Additional Licensing Requirements for Other Specific Licenses. (1) [~~General Qualifications for a Qualifying-Fair (QF) Provisional ("P") and Full ("A") Driver's License. An applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission shall meet the following requirements:~~

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

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

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

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

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

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

~~(g) Other criteria to be considered by the Presiding Judge and the District Track Committee shall include the applicant's ability to harness and equip a horse properly and to establish his or her proficiency in handling the animal; such examination to be administered by the District Track Committee.~~

~~(h) Upon satisfactory recommendations from both the Presiding Judge and the District Track Committee the applicant shall be granted a Provisional license for a probationary term of fifteen (15) pari-mutuel starts.~~

~~(i) Upon satisfactory completion of the probationary pari-mutuel races as described above, and with written approval of the Presiding Judge, a Provisional license shall be issued by this Association.~~

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

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

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

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

~~(c) Or made twenty-five (25) satisfactory extended pari-mutuel starts, or starts at Grand Circuit meetings in the two (2) year calendar period preceding the date of application provided he or she has at least fifty (50) satisfactory Fair starts.~~

~~(d) Notwithstanding the foregoing, the applicant must have at least ten (10) wins at extended pari-mutuel meetings while holding a Provisional license and meet the provisions of Section 9 of this rule or must have at least five (5) wins at extended pari-mutuel meetings while holding a Provisional license and obtain the unanimous consent of the Presiding Judge and the members of the local District Track Committee.~~

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

(2)[~~(5)~~] Veterinary personnel.

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

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician shall be accompanied by:

1. Evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky;[~~,~~] and

2. A "Veterinarian **Approval** [~~Authorization~~] Form" (KHRC 25-04 (01/10)) signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS Chapter 321.

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

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

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

(4)[~~(7)~~] Stable employee, occupational employee, vendor employee. In order to obtain a stable employee, occupational employee, or vendor employee license, the license **applicant shall submit a KHRA Form 25-04 from his or her employer** [~~applicant's employer shall sign the employee's license application~~] verifying employment and workers' compensation coverage.

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

Section **6.**[~~5.~~] Licensing Fees. (1) The following annual fees shall accompany the application and shall not be refundable:

(a) $125 - owner, trainer, **owner/trainer,** driver, **driver/trainer,** owner/trainer/driver, owner/driver, **matinee driver** [~~driver/trainer, owner/trainer, assistant trainer~~], veterinarian, [~~claiming license,~~] and temporary license;

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

(c) Fifty (50) dollars - [~~veterinary assistant,~~] veterinary technician, veterinary technologist, **veterinary assistant, farm manager, farm agent, mutuel clerk, vendor, and equine therapist** [~~equine health professional, vendor, mutuel employee, farm manager, and farm agent~~];

(d) Twenty-five (25) dollars - association employee, [~~occupational employee,~~] vendor employee, **occupational employee,** any person employed by a concern contracting with the association to provide a service or commodity and which employment requires that person's presence on association grounds during a race meeting, film patrol crew member, television production employee, member of an association security department (including a policeman, watchman, fireman, ambulance driver, or emergency medical technician), track superintendent, member of maintenance department staff, admissions department manager and employee, association concessions manager and employee, parking manager and employee, and all other persons employed by the association;

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

~~(f)~~] Five (5) dollars - stable employee **including stable foreman, exercise personnel, hotwalker, groom, watchman, and pony person.**

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

Section **7.**[~~6.~~] Fingerprinting.[~~,~~] If requested,[~~.~~] a license applicant **shall** [~~may be required to~~] furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license. If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints. The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section **8.**[~~7.~~] Multi-state/National Licenses. In lieu of a license application as required by this administrative regulation, an applicant may submit an ARCI Multi-State License and Information Form or the National Racing Compact License and Information Form. It shall be accepted if the commission determines that it ensures compliance with all licensing requirements in this administrative regulation and KRS Chapter 230.

Section **9. Search and Seizure. (1) The commission or designee may search any location described in KRS 230.260(7).**

(2) The commission or designee may seize any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of KRS Chapter 230 or KAR Title 810 or 811.

(3) A licensee shall:

(a) Cooperate with the commission or designee during an investigation; and

(b) Respond correctly to the best of the licensee's knowledge if questioned by the commission or designee about a racing matter.

(4) A licensee shall consent to out-of-competition testing in accordance with 811 KAR 1:240. [~~8. Consent to Investigate by License Applicants and Licensees. After an applicant files a license application, the commission may:~~

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

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

~~(3) Verify information provided by the applicant.~~]

Section **10.**[~~9.~~] Consent to Search and Seizure by Licensees. (1) By acceptance of a license, a licensee consents to search and inspection by the commission or its agents at any location described in KRS 230.260(2), including any training facility, and to the seizure of any prohibited medication, controlled substance, paraphernalia, or device in violation of state or federal law or **KAR** Title 810 or 811 of the Kentucky Administrative Regulations.

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

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

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

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

Section **11.**[~~10.~~] Employer Responsibility. (1) An employer shall not employ an unlicensed person for a position that requires a license under KRS 230.300 or 230.310 or this administrative regulation. If an employer does so, the employer may be subjected to license suspension, denial, or revocation under KRS Chapter 230, **or** Title 810 or 811 of the Kentucky Administrative Regulations.

(2) **Every employer shall report in writing to the commission or its designee, within twenty-four (24) hours, the discharge of any licensed employee, including the employee's name, occupation, and reason for the discharge.**

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

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

(5)[~~(4)~~] A licensed employer shall carry workers' compensation insurance covering his or her employees as required by KRS Chapter 342.

Section **12.**[~~11.~~] Financial Responsibility. A licensee shall maintain financial responsibility during the period for which the license is issued. A licensee's failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of **any occupation or which a license is required by this administrative regulation shall constitute** [~~his or her licensed occupation, constitutes~~] a failure to meet the financial responsibility requirements of KRS 230.310. If the licensee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked until the licensee provides written documentation of satisfaction of the judgment. An applicant for a license may be required to submit evidence of financial responsibility to the commission if [~~such~~] a judgment has been rendered against him or her.

Section **13.**[~~12.~~] Voluntary Withdrawal of License Application. **(1)** A license applicant may with the approval of the license review committee voluntarily withdraw his or her license application from the license review process.

(2) If the applicant chooses to voluntarily withdraw his or her application, then **the** [~~this~~] withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice.

(3) The commission shall issue a notice of the withdrawal, and the notice shall be communicated to the Association of Racing Commissioners International.

Section **14.**[~~13.~~] License Review Committee. (1) The executive director or presiding judge may refer a license application to the License Review Committee in lieu of denying.

(2) The License Review Committee shall be composed of the executive director or designee, the director of licensing or designee, the presiding judge or designee, and at least one (1) other commission member or commission staff member as designated by the executive director. At least three (3) members of the committee shall participate in any license review committee meeting.

(3) If a referral to the committee is made, then a license shall not be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the Committee to appear personally. If the committee is unable to make a favorable ruling on the license application, then the committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section **13**[~~12~~] of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.

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

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

Section **15.**[~~14.~~] License denial, revocation, or suspension. (1) The commission, **executive director, chief racing steward, or director of licensing may deny a license application, and the commission or presiding judge may suspend or revoke a license, or otherwise penalize in accordance with KRS**

~~230.320(1)~~ **a licensee** ~~for its designee may refuse or deny a license application; commission or presiding judge may suspend or revoke a license or otherwise penalize a licensee in accordance with KRS 230.320(1)~~], or other person participating in Kentucky horse racing, for any of the following reasons:

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

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

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

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

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

(f) The licensee or applicant has applied **for** and received a license at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;

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

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

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

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

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

(l) The licensee or applicant has demonstrated financial irresponsibility **as described by Section 12 of this administrative regulation;** [~~by accumulating unpaid obligations, defaulting on obligations, or issuing drafts or checks that are dishonored or not paid;~~]

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

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

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

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

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

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

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

~~1. A firearm; or~~

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

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

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

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

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

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

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

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

3. Fighting;

4. Assaults;

5. Offensive and profane language;

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

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

8. Disturbing the peace;

(y) The licensee or applicant has used profane, abusive, or insulting language to or interfered **with** or obstructed a commission member, employee, agent, or [~~any~~] racing official, while these persons are in the course of **discharging** [~~performing~~] their duties;

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

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

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

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

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

(ee) The licensee or applicant has failed to advise the commission of changes in the application information as required by Section **17**[~~16~~] of this administrative regulation;

(ff) The licensee or applicant has failed to comply with the temporary license requirements of Section **18**[~~17~~] of this administrative regulation;

(gg) The licensee or applicant has violated the photo identification badge requirements of Section **21**[~~20~~] of this administrative regulation;

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

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

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

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

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

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

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the presiding judge and to the ARCI by the division of licensing, **to ensure that** [~~whereby~~] other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

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

Section **16.**[~~15.~~] Reciprocity. If the license of a person is denied, suspended, or revoked, or if a person is ruled off, excluded, or ejected from a racetrack in Kentucky or in another jurisdiction,

the commission may require reinstatement at that track before a license is granted by the commission.

Section **17.**[~~16.~~] Changes in Application Information. (1)The licensee or applicant shall report changes in any information required for licensing in writing to the commission;

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

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

(a) Criminal charges;

(b) Criminal convictions;

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

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

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

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

Section **18.**[~~17.~~] Temporary licenses. (1)**(a)** Only an owner is eligible for a temporary license.

(b) A horse in a trainer's care shall not start in a race unless the owner has a current license or has an application for a temporary license, "[~~Application for a~~]Temporary Owner's License **Application**" (KHRC 25-02 (01/10)), on file with the commission.

(c) A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains.

(d) The commission may refuse the license if the applicant fails to supply a name, social security number, and mailing address for a temporary license.

(e) A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the thirtieth day pending completion of all licensing procedures.

(f) Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended or the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures.

(g) Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(h) If **a** temporary license expires prior to completion of all owner license procedures, the applicant shall pay an additional licensing fee.

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

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

Section **19.**[~~18.~~] Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except **if** [~~when~~] prohibited by Section **20**[~~19~~] of this administrative regulation due to a potential conflict of interest.

Section **20.**[~~19.~~] Conflict of interest. (1) The License Review Committee and the presiding judge or designees shall deny or refuse to process the license of a person, and the commission or the presiding judge shall revoke or suspend a licensee who is determined to have a conflict of interest. **A** [~~This~~] conflict of interest may **exist if** [~~exists when~~] a spouse, immediate family member, or other **person** [~~persons~~] in a similar relationship to a licensee or applicant holds a license which the License Review Committee or presiding judge finds to be a conflict of interest with the licensee's or applicant's. A finding of a conflict of interest may be appealed to the commission pursuant to KRS 230.320 and KRS Chapter 13B.

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

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

(a) Racing official;

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

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

(d) Officer or managing employee;

(e) Track maintenance supervisor or employee;

(f) Outrider;

(g) Race track security employee;

(h) Farrier;

(i) Racing chemist; and

(j) Testing laboratory employee.

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

Section **21.**[~~20.~~] License Photo Identification Badges. (1) If a licensee desires access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge). **A** [~~These~~] photo identification **badge is** [~~badges are~~] available to **a licensee** [~~licensees~~] upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.

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

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

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

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

Section **22.**[~~21.~~] Duties of Licensees. (1) A licensee shall be knowledgeable of this administrative regulation and, by acceptance of the license, agrees to abide by this administrative regulation.

(2) A licensee shall report to track security or judge any knowledge the licensee has that a violation of **this administrative regulation** [~~these rules~~] has occurred or may occur.

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

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

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

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

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

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

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

Section **23.**[~~22.~~] Common Law Rights of Associations. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

Section **24.**[~~23.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) **"License Application", KHRC 25-01, 04/10;**

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

(c) "Change in Application Information Form", KHRC 25-03, 04/10;

(d) "Veterinarian Approval Form", KHRC 25-04, 04/10; and

(e) "Rule 17, Sections 1 through 10", United States Trotting Association, 2009/2010. ["Licensing Application", (KHRC 25-01 (01/10));

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

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

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at www.khrc.ky.gov.[Owners. Every person owning a horse that is entered at a race meeting licensed by the authority shall be required to obtain a license from the authority and the United States Trotting Association. The application shall be on forms provided by the authority and shall be filed at any authority office. The license shall be presented to the clerk of the course at the time the horse is entered in a race.

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

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

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

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

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

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

(d) Furnish a completed application form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A holder of a current qualifying license issued by the United States Trotting Association may be allowed to drive a horse that is already qualified, however, if the horse does not meet the standards of the meeting, the horse shall be placed on the stewards list. If a race is held solely for qualifying drivers, the race may not be charted. A race solely for qualifying drivers must have more than four (4) starters.

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

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

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

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

(4) Fighting.

(5) Assaults.

(6) Offensive and profane language.

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

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

(9) Disturbing the peace.

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

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

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

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

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

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

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

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

ROBERT M. BECK, Chairman
ROBERT D. VANCE, Security
APPROVED BY AGENCY: January 14, 2010
FILED WITH LRC: January 15, 2010 at 2 p.m.
CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(As Amended at ARRS, April 14, 2010)

815 KAR 8:070. Installation permits.

RELATES TO: KRS 198B.654,[~~198B.6671, 198B.6672,~~] 198B.6673[~~198B.6674, 198B.6675, 198B.6676, 198B.6677,~~] 198B.6678, EO 2009-535

STATUTORY AUTHORITY: KRS 198B.654, 198B.6671, 198B.6672, 198B.6673, 198B.6674, 198B.6675, 198B.6676, 198B.6677, 198B.6678, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 **requires**[~~authorizes~~] the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations for the enforcement, administration and coordination of KRS 198B.650 through 198B.689. KRS 198B.6673 requires the board to establish a reasonable schedule of fees and charges to be paid for HVAC installation permits and[~~the necessary~~] inspections[~~incident thereto~~]. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings**,** and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the fees and charges for HVAC installation permits in Kentucky.

Section 1. Issuance of Permits. (1) Permits to construct, install, or alter a heating, ventilation, or air conditioning system shall only be issued to a licensed master heating, ventilation, and air conditioning contractor except as provided by subsection (3) of this section.

(2) A journeyman shall not construct, install, or alter a heating, ventilation, or air conditioning system unless the work is performed under the supervision of a licensed master HVAC contractor.

(3) **A permit to construct, install**[~~Permits to construct, install~~], or alter a heating, ventilation, or air conditioning system **shall**[~~may~~] be issued to **a homeowner who installs**[~~homeowners who install~~] a heating, ventilation, or air conditioning system in **the homeowner's**[~~their~~] legal residence or in a home constructed by **a homeowner for**[~~them for their~~] personal residential use, if all the following requirements are met:

(a) Application **shall be made on the HVAC Construction Permit Application: One & Two Family Dwellings,**[~~is made~~] for the permit prior to the initiation of the HVAC work;

(b) The homeowner **shall file**[~~files~~] with the application:

1. An affidavit stating that the homeowner shall abide by the terms of this **administrative** regulation;

2. Proof of adequate sizing of heating, ventilation, or air conditioning system to be installed; and

3. **A** complete design plan of all related duct and piping of system;

(c) All work shall be performed in compliance with the Kentucky Residential Code and the Kentucky Building Code**.**[~~; and~~]

(d) All the work shall be personally performed by the owner.

(4) Only one (1) homeowner permit for construction of a new home shall be issued to an individual within a five (5) year period.

Section 2. Permit Required. **(1) An application shall be made for a permit prior to installation on one (1) of the following forms:**

(a) HVAC Construction Permit Application: Commercial Buildings;

(b) HVAC Construction Permit Application: Multi-family Dwellings; or

(c) HVAC Construction Permit Application: One & Two Family Dwellings.

(2) An HVAC installation permit shall be required for the initial heating, ventilation, or air conditioning system:

(a)[~~(1)~~] For all new construction installations of heating, ventilation, or air conditioning systems;

(b)[~~(2)~~] For construction additions in which an additional heating, ventilation, or air conditioning system is installed;

(c)[~~(3)~~] For all existing buildings in which the first heating, ventilation, or air conditioning system is being installed; and

(d)[~~(4)~~] For projects in which a contractor assumes responsibility to:

1.[~~(a)~~] Make corrections;

2.[~~(b)~~] Test an installation performed by another contractor; or

3.[~~(c)~~] Install a system for which another master contractor has obtained a permit.

Section 3. A permit shall be issued and inspections performed upon request for the replacement of the following:

(1) Furnaces;
(2) Condensing units;
(3) Heat pumps;
(4) Fan coil units;
(5) Chiller systems; or
(6) Heating boiler systems not covered by KRS Chapter 236.

Section 4. HVAC Installation Permit Fees. (1) One- and Two-Family Dwelling Installations. The fee for each heating, ventilation, or air conditioning system installation permit for one- and two- family dwellings shall be seventy-five (75) dollars for the first system plus fifty (50) dollars for each additional system.

(2) Multi-Family Dwelling Installations. The fee for each heating, ventilation, or air conditioning system installation permit for multi-family dwellings other than duplexes, shall be seventy-five (75) dollars for the first system plus twenty-five (25) dollars for each additional system.

(3) **Commercial installations.**

(a)[~~Nonresidential Installations.~~] The fee for each heating, ventilation, or air conditioning system installation permit other than one (1)-, two (2)-**,** and multi-family dwellings shall be based upon the total dollar value of each HVAC installation, either actual or estimated.

(b)1. It shall be the obligation of the installing contractor to supply the complete value**, including**[~~which shall include~~] labor and material costs regardless of the purchaser.

2. Except as provided in subparagraph 3b of this paragraph, an exact figure does not need to be quoted or divulged to

the HVAC inspector or department.

3. The permit application shall include an affirmative, signed statement that the true value lies within certain limits, as listed in the left column of the table in this subparagraph.

a.[~~, only a designation that the true value lies within certain limits as listed in the left column of the table which follows.~~] The fees for heating, ventilation, or air conditioning system installation are listed in the right column of the table.

b. The department may request documented proof of costs from the permit applicant if the true value is in question[~~The Department reserves the right to request documented proof of costs from the permit applicant~~].

Amount in dollars	Permit fee
$2,000 or less	$75
$2,001 to $10,000	$150
$10,001 to $25,000	$225
$25,001 to $50,000	$275
$50,001 to $75,000	$325
$75,001 to $100,000	$435
$100,001 to $150,000	$550
$150,001 to $200,000	$660
$200,001 to $250,000	$770
$250,001 to $300,000	$890
$300,001 to $400,000	$1,000
$400,001 to $500,000	$1,350
$500,001 to $600,000	$1,500
$600,001 to $700,000	$1,650
$700,001 to $800,000	$1,850
$800,001 to $900,000	$2,050
$900,001 to $1,000,000	$2,250
$1,000,001 to $1,100,000	$2,450
$1,100,001 to $1,200,000	$2,650
$1,200,001 to $1,300,000	$2,850
$1,300,001 to $1,400,000	$3,050
$1,400,001 to $1,500,000	$3,250
$1,500,001 and above	$3,450

(4) Correction and Testing Permits. The permit fee shall be the base fee of seventy-five (75) dollars if the application for permit does not include any new installation, but[~~rather~~] is to make corrections or provide testing for an installation made by someone else.

Section **5.**[~~4.~~] Inspection Fees. (1) Each heating, ventilation, or air conditioning system permit shall include three (3) heating, ventilation, or air conditioning system inspections at no additional cost.

(2)**(a)** All heating, ventilation, or air conditioning system inspections in excess of the three (3) provided with purchase of permit shall be performed at the rate of fifty (50) dollars per inspection.

(b) Payment shall be received by the inspecting authority prior to the final inspection approval being granted.

Section **6.**[~~5.~~] Expiration of Permits. (1) All heating, ventilation, or air conditioning system installation permits issued under this administrative regulation shall expire six (6) months after the date of issuance unless the permitted work has begun.

(2) If construction begins within six (6) months of permit issuance**:**

(a) The permit shall be effective until completion of the planned heating, ventilation, or air conditioning system inspection; or

(b)[~~, the permit shall not expire until completion of the planned heating, ventilation, or air conditioning system inspection.~~

~~(3)~~] If the work ceases on a permitted project for a period exceeding twelve (12) months, the permit shall be void.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "HVAC Construction Permit Application: Commercial Buildings", April 2010;

(b) "HVAC Construction Permit Application: Multi-family Dwellings", April 2010; and

(c) "HVAC Construction Permit Application: One & Two Family Dwellings", April 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8:30 a.m. to 4:30 p.m.

RICHARD MOLONEY, CHAIRMAN
ROBERT D. VANCE, SECRETARY
APPROVED BY AGENCY: January 14, 2010
FILED WITH LRC; January 15, 2010 at 10 a.m.
CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(As Amended at ARRS, April 14, 2010)

815 KAR 8:080. Inspections and tests.

RELATES TO: KRS 198B.6671, 198B.6672, 198B.6673, 198B.6674, 198B.6675, 198B.6676. 198B.6677, 198B.6678, EO 2009-535

STATUTORY AUTHORITY: KRS 198B.654, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 authorizes the Board of Heating, Ventilation and Air Conditioning contractors to promulgate administrative regulations to enforce KRS 198B.650-689. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the requirements for the tests and inspections that are necessary to ensure compliance with the Uniform State Building Codes.

Section 1. Inspections. The department or authorized local HVAC permitting and inspection program shall inspect the following initial installations to ensure compliance with the Uniform State Building Code and the Uniform State Residential Code:

(1)(a) Air conditioning or cooling system;

(b) Heating system; and

(c) Ventilation system**; and**.

(2) In buildings condemned by local jurisdictions, alterations of **an HVAC system, which**[~~the HVAC system~~] shall be considered an initial HVAC system installation.

Section 2. Major Repairs. The department or authorized local HVAC permitting and inspection program may inspect major repairs, if requested and permitted. This shall not pertain to inspections that arise from violations or complaints.

Section 3. Access. All access, equipment, and material necessary for inspections and tests shall be furnished by the persons obtaining the HVAC installation permit.

Section 4. Residential Inspections. (1) It shall be the responsibility of the person who obtained the HVAC installation permit to notify the department or authorized local HVAC permitting and inspection program and request all inspections.

(2) Prior to, or at the time of the first inspection, sizing calculations shall be provided to the department or authorized local HVAC permitting and inspection program or inspector.

(3) The inspector shall verify **the**:

(a) Date of calculation;

(b) Orientation of structure;

(c) Design conditions;

(d) Heat gain;

(e) Heat loss;

(f) Square footage; and

(g) Additional documentation **necessary**[~~which may be requested at the time of inspection~~] to support sizing calculations.

(4)**(a)** If any portion of the HVAC system is below ground, the underground portion of the system shall be inspected and approved prior to covering.

(b) If conditions require partial coverage of the permitted system, permission shall be requested of[~~,~~] and received from the inspector prior to coverage.

(c) Covering an installation without approval or permission **shall result in the uncovering of the system for inspection, unless unnecessary or if uncovering the system is likely to result in more damage**[~~may result in the excavation of the system for inspection~~].

(5)**(a)** Rough-in inspections shall be conducted on all work[~~,~~] prior to covering[~~,~~] or concealment.

(b) If conditions require partial coverage of the permitted system, permission shall be requested of[~~,~~] and received from[~~,~~] the inspector prior to coverage.

(c) Covering an installation without approval or permission **shall result in the uncovering of the system for inspection, unless unnecessary or if uncovering the system is likely to result in more damage**[~~may result in the uncovering of the system for inspection~~].

(6) **A** final inspection shall be conducted after all equipment has been set, in working order, and prior to occupancy.

Section 5. Commercial Inspections. (1) It shall be the responsibility of the person who obtained the HVAC installation permit to notify the department or authorized local HVAC permitting and inspection program and request all inspections.

(2) Approved plans shall be made available to **an inspector on site during an inspection.**

(3)(a)[~~inspectors, on site, at time of inspections.~~

~~(3)~~] If any portion of the HVAC system is below ground, the underground portion of the system shall be inspected and approved prior to covering.

(b) If conditions require partial coverage of the permitted system, permission shall be requested of and received from the inspector prior to coverage.

(c) Covering an installation without approval or permission **shall result in the uncovering of the system for inspection, unless unnecessary or if uncovering the system is likely to result in more damage**[~~may result in the uncovering of the system for inspection~~].

(4)**(a)** Rough-in inspections shall be conducted on all work[~~,~~] prior to covering, concealment, or setting equipment.

(b) If conditions require partial coverage of the permitted system, permission shall be requested of, and received from the inspector prior to coverage.

(c) Covering an installation without approval or permission **shall result in the uncovering of the system for inspection, unless unnecessary or if uncovering the system is likely to result in more damage.**[~~may result in the uncovering of the system for inspection~~].

(5) **A** final inspection shall be conducted after all equipment has been set, in working order, and prior to occupancy.

(6) A partial or temporary final inspection may be conducted if:

(a) The HVAC system's service area of the building is completed; and

(b) The temporary or partial final inspection will not prevent the remaining portion of the system from being inspected.

Section 6. Extent of Inspections. (1) Inspections shall include the following:

(a) Heating systems;

(b) Cooling systems;

(c) Residential exhaust and ventilation systems;

(d) Commercial exhaust and ventilation systems; and

(e) Dryer venting.

(2) **An inspection**[~~Inspections~~] shall not consist of gas piping on the supply side of equipment shut offs.

Section 7. Certificate of Approval. Upon the satisfactory completion of final inspection of the HVAC system, a certificate of approval shall be issued by the department or authorized local HVAC permitting and inspection program.

RICHARD MOLONEY, Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 11, 2010

FILED WITH LRC: March 15, 2010 at 9 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(As Amended at ARRS, April 14, 2010)

815 KAR 8:090. Fees and refunds.

RELATES TO: KRS 198B.656, 198B.658, 198B.660, 198B.664, 198B.6671,[~~and~~] EO 09-535

STATUTORY AUTHORITY: KRS 198B.656, **198B.660(1)(b), (2), 198B.662, 198B.664, 198B.6671,**[~~198B.658, 198B.660, 198B.664, 198B.6671,~~] EO 09-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.656, **198B.660, 198B.662, 198B.664, and 198B.6671 authorize the Board of Heating, Ventilation and Air Conditioning Contractors to establish license and permit fees. EO 1009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than the executive director, as the head of the department. This administrative regulation establishes procedures pertaining to fee payments and refunds.**[~~198B.658, 198B.660, 198B.664 198B.6671 authorizes the Board of Heating, Ventilation and Air Conditioning Contractors to establish license and permit fees. This administrative regulation establishes acceptable methods for payment of fees, a penalty for returned payments, and the requirements to receive a refund of installation permit payments. The Board of Heating, Ventilation and Air Conditioning Contractors is directed by KRS 198B.660 to adopt reasonable fees for licensure examination as a journeyman HVAC mechanic and master HVAC contractor. KRS 198B.662 authorizes the Board of Heating, Ventilation and Air Conditioning Contractors to establish fees for the activation of licenses. KRS 198B.664 authorizes the Board of Heating, Ventilation and Air Conditioning Contractors to establish fees for the renewal or revival of licenses, and KRS 198B.6671 authorizes the Board of Heating, Ventilation and Air Conditioning Contractors to establish fees for installation permits. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the manner in which fees are to be paid to the department. This administrative regulation also establishes the penalty for nonpayment of fees as well as the requirements to receive a refund for installation permits.~~]

Section 1. **A fee submitted to the Division of HVAC shall be**[~~Fees. (1) Fees submitted to the Division of HVAC shall be paid by:~~

~~(a) Money order;~~

~~(b) Check;~~

~~(c) Credit card;~~

~~(d) Debit card; or~~

~~(e) Electronic funds transfer.~~

~~(2) All fees shall be~~] made payable to the Kentucky State Treasurer.

Section 2.[~~Returned Payments.~~] (1) If a fee is returned to the Division of HVAC for nonpayment or insufficient funds, the payor

shall ~~pay/be assessed a fee of~~] thirty-five (35) dollars, **unless**[~~except when~~] proof of financial institution error is provided.

(2) **If a company or individual submits a check returned to the division for insufficient funds, the payor shall not, for a period of at least six (6) months, make a payment to the Division of HVAC by personal check**[~~Companies or individuals that are notified of a returned payment shall, for a period of six (6) months, make all payments to the Division of HVAC by:~~

~~(a) Cashier's check;~~

~~(b) Certified check;~~

~~(c) Money order; or~~

~~(d) Electronic funds transfer~~].

Section 3. **A refund for an installation permit**[~~Permit Refunds. Refunds for installation permits~~] shall be given if:

(1) The refund request is made within six (6) months of purchase; and

(2) Work has not begun on the project for which the permit was issued.

RICHARD MOLONEY, Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: January 14, 2010

FILED WITH LRC: January 15, 2010 at 10 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, April 14, 2010)

906 KAR 1:180. Operation and services; personal services agencies.

RELATES TO: KRS Chapter 13B, 209.030(2), (3), 216.710-216.716, 216B.015, 620.030(1)

STATUTORY AUTHORITY: KRS 216.712(4)

NECESSITY, FUNCTION, AND CONFORMITY:[~~KRS 216.712(1) provides that no personal services agency shall be operated, maintained, or advertised without obtaining certification from the Cabinet for Health and Family Services.~~] KRS 216.712(4) requires the cabinet Secretary to promulgate administrative regulations to implement KRS 216.712 through 216.716**, which require that personal service agencies be certified by the Cabinet for Health and Family Services**. This administrative regulation establishes standards for the certification of personal services agencies.

Section 1. Definitions. (1) "Adverse action" means action taken by the cabinet's Office of Inspector General (OIG) to deny or revoke the certification of a personal services agency.

(2) "Cabinet" is defined by KRS 216.710(1).

(3) "Certification" means that a person, business entity, corporation, or association, either for-profit or not-for-profit, has been issued a certificate by the Office of Inspector General to operate a personal services agency.

(4) "Client" is defined by KRS 216.710(2).

(5) "Designated representative" is defined by KRS 216.710(5).

(6) "Direct service" is defined by KRS 216.710(6).

(7) "Employee" means an individual who is:

(a) Directly employed by a personal services agency;

(b)[~~,~~] An agent of a personal services agency;

(c)[~~, or~~] an independent contractor who has a contractual arrangement with a personal services agency to provide personal services; or

(d) Referred by another person or other agency that has an ownership or financial interest that is realized from the delivery of personal services rendered by the individual for whom the referral is made.

(8) "Facilitate the self-administration of medication" means the client or the client's guardian, healthcare surrogate as defined by KRS 311.621(15), or attorney-in-fact as appointed by a durable power of attorney authorizing the attorney-in-fact to make health care decisions for the client, has executed a written consent designating the persons or entities authorized to prepare or direct the client's medications and authorizing the personal services agency to facilitate the self-administration of medication which shall be limited as follows:

(a) A client's medication shall:

1. Be prepared or directed in accordance with KRS 216.710(7)(a)2 by:

a. The client's designated representative; or

b. A licensed health-care professional who is not an owner, manager, or employee of the personal services agency;

2. Except for ointments, be preset in a medication organizer or be a single dose unit; and

3. Include the client's name on the medication organizer or container in which the single dose unit is stored;

(b) A personal services agency direct care staff person may:

1. Remind a client when to take medications and observe to ensure that the client takes the medication as directed;

2. Hand the client's medication to the client. If the client is unable to open the medication, the staff person may open the unit dose or medication organizer, remove the medication from a medication organizer, and close the medication organizer for the client;

3. Assist a client in consuming oral medication, including tablets, capsules, or liquid medication, by:

a. Placing the dose in a container and placing the container to the mouth of the client;

b. Placing the medication in the client's hand or mouth; or

c. Following the written instructions of the client's designated representative or licensed health care professional for how to enable the client to take his or her medication; or

4. Steady or guide a client's hand while applying ointments; and

(c) Facilitating the self-administration of medication shall not include:

1. Instilling eye, ear, or nasal drops;

2. Mixing, compounding, converting, or calculating medication doses;

3. The preparation of syringes for injection or the administration of medications by any injectable route;

4. Administration of medications through intermittent positive pressure breathing machines or a nebulizer;

5. Administration of medications by way of a tube inserted in a cavity of the body;

6. Administration of parenteral preparations;

7. Administration of irrigations or debriding agents used in the treatment of a skin condition; or

8. Administration of rectal, urethral, or vaginal preparations.[~~(8) "Facilitate the self-administration of medication" means:~~

~~(a) Reminding the client to take medications;~~

~~(b) Reading the medication's label;~~

~~(c) Confirming that medication is being taken by the client for whom it is prescribed;~~

~~(d) Opening the dosage packaging or medication container but not removing or handling the actual medication;~~

~~(e) Storing the medication in a manner that is accessible to the client; and~~

~~(f) Making available the means of communicating with the client's physician and pharmacy for prescriptions by telephone, facsimile, or other electronic device.~~]

(9) "Parent personal services agency" is defined by KRS 216.710(9).

(10) "Personal services" is defined by KRS 216.710(7).

(11) "Personal services agency" is defined by KRS 216.710(8).

(12) "Provisional certification" means that the Office of Inspector General (OIG) has issued a ninety (90) day preliminary certificate to operate a personal services agency to a person, business entity, corporation, or association, either for-profit or not-for-profit, which:

(a) Has three (3) or fewer employees **when the initial application is filed**[~~at the time of initial application~~]; and

(b) Indicated on the application that it intends to hire additional employees within ninety (90) calendar days of the date of the ap-

plication.

(13) "Significant financial interest" means lawful, direct or indirect ownership of a personal services agency or health care facility licensed pursuant to KRS Chapter 216B in an amount equal to or greater than twenty-five (25) percent total ownership of the personal services agency or health care facility.

Section 2. Certification of Personal Services Agencies. (1) To operate a personal services agency, a person or entity shall obtain certification from the Office of Inspector General.

(2) If an out-of-state personal services agency operates a branch office in Kentucky, the out-of-state agency shall be required to obtain separate certificates for each of its branch offices in Kentucky[~~establish a parent personal services agency in Kentucky to obtain certification~~].

(3) A branch office of a parent personal services agency shall be owned and controlled by the parent personal services agency.

(4) A "health facility" or a "health service" as defined by KRS 216B.015 or a health-care practitioner licensed, certified, or regulated by local, state, or federal statutes or **administrative** regulations shall not be required to obtain certification to provide personal services pursuant to KRS 216.710(7)(b)9.

Section 3. Initial Application, Provisional Certification, and Approval. (1)[~~(a) Except for an entity that operates a personal services agency in Kentucky prior to December 31, 2009,~~] No person, entity, corporation, or association shall provide personal services prior to obtaining certification.[~~(b) Pursuant to KRS 216.712(1), an entity that operates a personal services agency in Kentucky prior to December 31, 2009, shall have until that date to file an application as described in subsection (2) of this section.~~]

(2) An applicant for initial certification, including provisional certification, shall submit to the OIG:

(a) An initial application fee of $500 made payable to the Kentucky State Treasurer;

(b) A completed Application for Certification to Operate a Personal Services Agency, OIG - 1180, November 2009[~~, incorporated by reference in Section 16 of this administrative regulation~~]; and

(c) Documentation required by Section 3.A if applicable, and Section 6 of the application.

(3) Approval of initial certification shall be contingent on:

(a) Submission of the initial application fee of $500;

(b) The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

(c) Submission of the documentation required by Section 3.A if applicable, and Section 6 of the application.

(4)(a) Approval of provisional certification shall be contingent on:

1. Submission of the initial application fee of $500;

2. The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

3. Submission of the documentation required by Section 3.A if applicable, and Section 6 of the application.

(b) A personal services agency operating under provisional certification shall, no later than fourteen (14) calendar days prior to expiration of the provisional certificate, submit employee information required by Section 6, paragraph 2 of the Application for Certification to Operate a Personal Services Agency, OIG - 1180 for each employee hired by the agency after submission of the application for initial certification.

(c) If a personal services agency operates under provisional certification prior to approval of initial certification, the initial certification period shall expire one (1) year from the date of the provisional certificate.

Section 4. Annual Recertification. (1) At least sixty (60) calendar days prior to expiration of certification, the personal services agency shall submit to the OIG:

(a) An annual recertification fee of $350 made payable to the Kentucky State Treasurer;

(b) A completed Application for Certification to Operate a Personal Services Agency, OIG - 1180, November 2009[~~, incorporated by reference in Section 16 of this administrative regulation~~]; and

(c) Documentation required by Section 6 of the application.

(2) Approval of recertification shall be contingent on:

(a) Submission of the annual recertification fee of $350;

(b) The applicant's demonstration of continued compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

(c) Submission of documentation required by Section 6 of the application.

Section 5. Change of Status. (1) Within thirty (30) calendar days after a change in an ownership interest of more than twenty-five (25) percent of a personal services agency, the following shall be submitted to the OIG:

(a) An Application for Certification to Operate a Personal Services Agency, OIG - 1180;

(b) Documentation required by Section 3.A if applicable, and Section 6 of the application;

(c) A fee of $350 made payable to the Kentucky State Treasurer; and

(d) A bill of sale or comparable document which includes:

1. The name and signature of the new owner or corporation;

2. The name and signature of the buyer and the seller; and

3. The effective date of the transaction.

(2) Following a change of ownership reported in accordance with subsection (1) of this section, certification shall be effective for a period of one (1) year from the date the change of ownership is approved by the OIG.

(3) A personal services agency shall notify the OIG in writing within thirty (30) calendar days after the effective date of:

(a) A change of name;

(b) A change in the location of the parent personal services agency or a branch office;

(c) The opening of a new branch office in Kentucky; or

(d) The closing of the parent personal services agency or an existing branch office within the state.

Section 6. Staff Requirements. (1)(a) A personal services agency shall employ an individual to act as the personal services agency's manager.

(b) The manager shall be responsible for the organization and daily operation of the personal services agency.

(c) The manager shall designate in writing one (1) or more individuals to act on behalf of, or to perform any or all of the manager's responsibilities during the time in which the manager is unavailable to perform daily managerial duties for at least three (3) consecutive business days.

(2) Prior to acting as a personal services agency's manager, or prior to providing direct services to a client, an applicant for employment in a personal services agency shall submit to, and have completed a:

(a)[~~1.~~] Criminal record check conducted by the Justice and Public Safety Cabinet, [~~or the~~] Administrative Office of the Courts, or a company that conducts a search of criminal record information maintained by the Justice and Public Safety Cabinet or Administrative Office of the Courts[~~; or~~

~~2. Criminal record check conducted by means of a fingerprint check of the National Crime Information Database~~];

(b) Check of the nurse aide and home health aide abuse registry established pursuant to 906 KAR 1:100;

(c) Substance abuse test; and

(d)1. A tuberculosis (TB) risk assessment performed and reported by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.

2. If the TB risk assessment indicates that the applicant for employment is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the individual shall submit to the following for purposes of employment:

a. Follow-up tuberculin skin test (TST); or

b. Blood assay for M. tuberculosis (BAMT).

3. An individual who has a positive TST result or a positive

BAMT result:

a. Shall have a medical evaluation for possible active TB and receive a chest x-ray; and

b. Shall not provide direct services to a client until evidence is provided to the personal services agency documenting that the individual is free of active TB as verified through a health professional's statement, signed by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.

(3) A personal services agency may, at its discretion, request that its manager or an employee who provides direct services to a client submit to any of the following background checks after the date of initial hire:

(a) Criminal record check conducted by the Justice and Public Safety Cabinet, Administrative Office of the Courts, or a company that conducts a search of criminal record information maintained by the Justice and Public Safety Cabinet or Administrative Office of the Courts;

(b) Check of the nurse aide and home health aide abuse registry; or

(c) Substance abuse test.

(4) A personal services agency shall not employ or retain an individual to serve as a manager or provide direct services to a client if the individual:

(a) Has been convicted of a crime defined by KRS 216.710(3) as verified through a criminal record check conducted pursuant to subsection (2)(a) or (3)(a) of this section;

(b) Appears on the nurse aide and home health aide abuse registry as verified through a check of the nurse aide and home health aide abuse registry conducted pursuant to subsection (2)(b) or (3)(b) of this section;

(c) Tests positive for the presence of an illegal drug as verified through a substance abuse test conducted pursuant to subsection (2)(c) or subsection (3)(c) of this section; or

(d) Fails to provide upon initial employment pursuant to subsection (2)(d) or annually pursuant to subsection (5) of this section:

1. A copy of the results of a health professional's statement documenting that the individual is free of active tuberculosis;

2. Documentation of a negative TST; or

3. Documentation of a negative BAMT.

(5)(a)[~~(4)~~] A personal services agency shall require its manager and each employee who provides direct services to a client to submit annually to a[~~, and have completed a:~~

~~(a)1. Criminal record check conducted by the Justice and Public Safety Cabinet or the Administrative Office of the Courts; or~~

~~2. Criminal records check conducted by means of a fingerprint check of the National Crime Information Database;~~

~~(b) Check of the nurse aide and home health aide abuse registry established pursuant to 906 KAR 1:100; and~~

~~(c)1.~~] Tuberculosis risk assessment performed and reported by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.

(b)[~~2.~~] If a determination is made from the annual tuberculosis risk assessment that the employee is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the employee shall submit to a follow-up TST or BAMT.

(c)[~~3.~~] An employee who has a positive TST result or a newly positive BAMT shall have a medical evaluation for possible active TB and receive a chest x-ray.

(d)[~~4.~~] If the annual tuberculosis screening reveals that the employee is recently infected, the employee shall not provide direct services to a client until evidence is provided documenting that the employee is free of active tuberculosis as verified through a health professional's statement signed by a physician, advanced registered nurse practitioner, physician's assistant, or a registered nurse.

(6)[~~(5)~~] A personal services agency shall maintain documentation of the following in employee records:

(a) The results of each criminal record check conducted pursuant to subsection[~~subsections~~] (2)(a) [~~and (4)(a)~~] of this section;

(b) The results of each check of the nurse aide and home health aide abuse registry conducted pursuant to subsection[~~subsections~~] (2)(b) [~~and (4)(b)~~] of this section;

(c) The results of the substance abuse test conducted pursuant to subsection (2)[~~(1)~~](c) of this section; and

(d) Documentation from a health professional that the employee is free of active TB and, if applicable, documentation of a follow-up TST or BAMT, chest x-ray, or medical evaluation.

(7)[~~(6)~~] A personal services agency shall:

(a) Maintain employee records for a period of at least five (5) years; and

(b) Ensure that the records of current employees are:

1. Maintained on the premises of the agency; or

2. Accessible via a central computer file.

(8)[~~(7)~~] **A**[~~No~~] personal services agency or agency employee shall **not be, or shall not**[~~be, or~~] apply to be a client's:

(a) Guardian;

(b) Power of attorney;

(c) Conservator;

(d) Limited conservator;

(e) Limited guardian;

(f) Standby guardian; or

(g) Testamentary guardian.

Section 7. Staff training and Competency. (1) Prior to providing direct services to a client, each employee shall receive training from the personal services agency regarding the following:

(a) Procedures for reporting abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3), or child abuse or neglect pursuant to KRS 620.030(1);

(b) Procedures for facilitating the self-administration of medications if personal services agency staff facilitate the self-administration of medication[~~, which prohibits an employee from:~~

~~1. Removing medication from its packaging or medication container; or~~

~~2. Handling medication for a client~~]; and

(c) Effective communication techniques tailored to individual client needs.

(2)(a) A personal services agency shall evaluate the competency of each employee who will provide direct services to a client.

(b) The agency's evaluation to determine competency shall pertain to each personal services task the agency chooses to have the employee perform.

(3)(a) An employee's evaluation and a determination by the personal services agency that the employee is competent to perform a personal services task shall occur before the employee performs the task for a client without direct agency supervision.

(b) The content of the employee's training and evaluation shall:

1. Be documented and maintained in the employee's record, which shall be retained for a period of at least five (5) years; and

2. Include the date and the signature of the:

a. Person who conducted the training and evaluation; and

b. Employee who received the training and evaluation.

Section 8. Service Agreement. (1) Each personal services agency shall provide a written service agreement to the client or the client's designated representative that includes the following:

(a) The charge for each service provided by the personal services agency;

(b) The personal services agency's policy for notifying the client or client's designated representative of any change in the charge for services. Notice of an increase in the charge for services shall be given to a participating client or client's designated representative at least thirty (30) calendar days in advance of the effective date of the increase[~~, and any increase in the amount billed to the client shall be documented on the client's service plan in accordance with Section 9(3) of this administrative regulation~~];

(c) The hours the personal services agency's office is open for business;

(d) The procedure for contacting the personal services agency's manager or the manager's designee;

(e) The procedure and telephone number to call for the purpose of filing a grievance with the personal services agency as described in Section 10 of this administrative regulation;

(f) An explanation of whether the personal services agency:

1. Directly employs the individual who will be providing personal services to the client;

2. Provides bonded protection for the client; and

3. Pays workers compensation or other benefits for the individ-

ual who will be providing personal services to the client;

(g) Name of the personal services agency's owner, including anyone with a significant financial interest in the agency;

(h) The procedure for changing or terminating a client's service plan; and

(i) A statement of client rights, which shall include the following:

1. The client has the right to have the client's property treated with respect;

2. The client has the right to request a change in his or her service plan, including the temporary suspension, permanent termination, temporary addition, or permanent addition of a service;

3. The client has the right to file a grievance as described in Section 10 of this administrative regulation regarding services, employee conduct, or the lack of respect for property and not be subject to discrimination or reprisal for filing the grievance; and

4. The client has the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.

(2) A personal services agency shall report to the cabinet an incident of suspected:

(a) Abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3); or

(b) Child abuse or neglect pursuant to KRS 620.030(1).

Section 9. Service Plan. (1) A personal services agency's manager or the manager's designee shall prepare a service plan. The initial service plan shall:

(a) Be in writing, dated, and signed by the:

1. Individual who prepared it; and

2. Client or client's designated representative;

(b) List the types and schedule of services to be provided to the client; and

(c) Identify the charge per service or charge per hour, whichever method the agency uses to bill clients.

(2) If a client or the client's designated representative requests a change in the type of service, duration of the service, or an increase or decrease in the number of visits, the personal services agency manager or manager's designee shall document on the client's service plan the:

(a) Requested change;

(b) Name of the person who requested the change; and

(c) Date the request was made.[~~and total amount that will be billed to the client.~~

~~(2)(a) A change in the provision of any service shall be documented in the written service plan.~~

~~(b) If a change in services results in a change in the amount billed to the client, the revised service plan shall include an explanation of the new charges to the client and be signed and dated by:~~

~~1. The personal services agency employee who documented the change in the plan; and~~

~~2. The client or the client's designated representative.~~

~~(c) If a change in services does not result in any change in the amount billed to the client, the revised service plan shall not require a second signature by the client or the client's designated representative.~~]

(3) A personal services agency shall provide a copy of the service plan to the client within ten (10) calendar days of the date that[~~:~~

~~(a)~~] The agency begins providing initial services[~~; or~~

~~(b) A change in the provision of a service is documented in the written service plan~~].

Section 10. Client Grievances. (1) A personal services agency shall investigate a grievance made by a client or the client's designated representative alleging:

(a) An issue with a service that is furnished;

(b) Failure to furnish a service listed in the service plan;

(c) Failure to provide thirty (30) day advance notice of an increase in the amount the agency charges for its services;

(d) Inappropriate conduct of an employee while the individual is providing services to the client; or

(e) A violation of the client's rights.

(2)(a) A personal services agency shall:

1. Document how the agency investigated each grievance; and

2. Maintain on file for a period of at least five (5) years a written record documenting the outcome of the agency's investigation, including any action taken by the agency.

(b) Upon completing an investigation of a grievance, the personal services agency shall document that it notified the individual who reported the grievance of the outcome of the investigation and any action the agency plans to take as a result.

Section 11. Complaint Investigations. (1) The OIG shall investigate a:

(a) Report of any business that provides personal services without receiving certification[~~. A report received prior to December 31, 2009, of a business that provides personal services without certification shall not be accepted for investigation~~];

(b) Report of any business that markets its services as a personal services agency without receiving certification[~~. A report received prior to December 31, 2009, of a business that markets its services as a personal services agency without certification shall not be accepted for investigation~~];

(c) Complaint against a certified personal services agency in which the agency is alleged to be in noncompliance with the requirements of this administrative regulation or KRS 216.712;

(d) Complaint against a certified personal services agency in which an agency employee is alleged to have abused or neglected a client, or misappropriated a client's property; or

(e) Complaint against a certified personal services agency in which an agency employee is alleged to have provided services to a client that exceed the scope of personal services [~~or facilitated the self-administration of medication in a manner that fails to comply with the criteria established pursuant Section 1(8) of this administrative regulation~~].

(2)(a) A certified personal services agency or a business that is the subject of a complaint investigation shall not deny access to a representative of the OIG, after proper identification, to make an inspection for determining compliance with the requirements of this administrative regulation or KRS 216.712.

(b) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the OIG to enter the agency or deny access to records related to an inspection or investigation shall result in revocation of a personal services agency's certification.

Section 12. Request for Additional Information and Plans of Correction. (1) [~~An entity that applies for initial certification prior to December 31, 2009, shall submit, within sixty (60) calendar days from the date the OIG receives the entity's Application for Certification to Operate a Personal Services Agency, OIG - 1180, documentation that its manager and each employee who provides direct services have submitted to, and completed the:~~

~~(a) Substance abuse test required by Section 6(2)(c) of this administrative regulation; and~~

~~(b) Tuberculosis screening required by Section 6(2)(d) of this administrative regulation.~~

~~(2) If an entity fails to submit documentation as required by subsection (1) of this section within sixty (60) calendar days from the date the application is received by the OIG, the application shall be considered incomplete and certification shall not be approved.~~

~~(3)~~](a) The OIG shall notify an applicant or certified personal services agency in writing after:

1. Receipt of an incomplete or illegible application for initial certification or recertification;

2. Receipt of an application for initial certification or recertification in which additional information is needed by the OIG to verify that the applicant or personal services agency is in compliance with the requirements of this administrative regulation and KRS 216.712; or

3. Completion of a complaint investigation pursuant to Section 11 of this administrative regulation.

(b) The OIG's written notification specified in paragraph (a) of this subsection shall request that the applicant or certified personal services agency submit the following within ten (10) calendar days of the date of the notice:

1. Additional information needed by the OIG to deem an initial or recertification application as complete or legible[~~. An exemption~~

~~to the ten (10) day submission requirement shall apply if the personal services agency has been granted a sixty (60) calendar day extension to submit evidence of substance abuse testing or tuberculosis screening in accordance with subsection (1) of this section~~];

2. Additional information needed by the OIG to make a determination of compliance with the requirements of this administrative regulation and KRS 216.712; or

3. A written plan of correction if the OIG has found upon completion of a complaint investigation that the certified personal services agency is in violation of this administrative regulation or KRS 216.712. A plan of correction shall:

a. Be signed by the personal services agency's owner or manager;

b. Specify the date by which the agency intends to have corrected the violation;

c. Identify the specific measures the agency intends to use to correct the violation; and

d. Identify the specific measures the agency plans to use to ensure the violation will not recur.

(c) The OIG shall review additional information or a written plan of correction submitted pursuant to paragraph (b) of this subsection and notify the applicant or certified personal services agency in writing of the decision to:

1. Approve or not approve an application;

2. Accept or not accept a plan of correction; or

3. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712.

(d) If the OIG determines that a plan of correction is not acceptable and makes a written request for an amended plan of correction, the certified personal services agency shall submit the amended plan of correction within ten (10) calendar days of the date of the OIG's written request. The OIG shall review an amended plan of correction and notify the personal services agency in writing of the decision to:

1. Accept the amended plan of correction;

2. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712; or

3. Require the agency to submit an acceptable plan of correction.

(e) A certified personal services agency that fails to submit an acceptable plan of correction or acceptable amended plan of correction shall have its certification revoked.

(2)[~~(4)~~] The OIG may impose fines in accordance with KRS 216.714(1) or (2).

Section 13. Denial and Revocation. (1) Initial certification shall be denied if an applicant:

(a) Has a significant financial interest in the entity applying for certification and held a significant financial interest in a personal services agency or health facility licensed pursuant to KRS Chapter 216B in which the agency's certification or facility's licensure was revoked during the three (3) years immediately preceding the filing of the application;

(b) Knowingly misrepresents or submits false information on the application; or

(c) Submits an application which fails to validate the entity's compliance with the requirements of this administrative regulation and KRS 216.712.

(2) Certification shall be revoked if a personal services agency:

(a) Fails to apply for annual recertification pursuant to Section 4(1) of this administrative regulation;

(b) Knowingly misrepresents or submits false information on the application at the time of annual recertification;

(c) Submits an application for annual recertification which fails to validate the agency's compliance with the requirements of this administrative regulation and KRS 216.712;

(d) Fails to comply with the background check and employment requirements of Section 6(2), [~~(3), and~~] (4), and (5) of this administrative regulation;

(e) Knowingly retains an employee who is:

1. Found by the cabinet to have abused or misappropriated a client's property; or

2. Convicted of, or pleads guilty, to a crime as defined by KRS 216.710(3);

(f) Fails to submit an acceptable plan of correction or acceptable amended plan of correction pursuant to Section 12(1)(b)3[~~(3)(b)2~~] or (d) of this administrative regulation;

(g) Interferes with a cabinet representative's ability to perform an official duty; or

(h) Provides services that are beyond the scope of personal services as defined by KRS 216.710(7).

(3) Written notice of adverse action shall be provided at least thirty (30) calendar days prior to the effective date of the denial or revocation.

(4) The adverse action notice shall:

(a) Explain the reason for the denial or revocation of certification;

(b) Specify that the personal services agency shall cease operation prior to the effective date of the adverse action;

(c) Advise the personal services agency of the right to request an appeal prior to the effective date of the adverse action;

(d) Specify that denial or revocation shall be stayed if an appeal is requested; and

(e) Require the agency to surrender the certificate of operation to OIG when the denial or revocation becomes effective.

Section 14. Closure of a Personal Services Agency. If a personal services agency closes voluntarily or as the result of adverse action, the agency shall relinquish to the OIG its certificate to operate as a personal services agency immediately after the effective date of the closure.

Section 15. Appeals. (1) A personal services agency that submits a written request for appeal within thirty (30) calendar days of the date the agency receives a notice of adverse action shall be afforded a hearing in accordance with KRS Chapter 13B.

(2) If a hearing officer's final order does not uphold revocation of certification, the personal services agency may resume providing personal services.

Section 16. Incorporation by Reference. (1) "OIG - 1180, Application for Certification to Operate a Personal Services Agency", edition November 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY REINLE BEGLEY, Inspector General
JANIE MILLER, Secretary

APPROVED BY AGENCY: February 13, 2010

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

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, April 14, 2010)

910 KAR 1:260. Kentucky Family Caregiver Program.

RELATES TO: KRS Chapter 13B, Chapter 514, 199.011(4), 205.455(4), 42 U.S.C. 601, 651, 1381, 3030s, 3030s-1

STATUTORY AUTHORITY: KRS 194A.050(1), **205.201(1)**[~~2006 Ky. Acts ch. 252 Part I.H.7.(7)~~]

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 205.201(1) requires the cabinet to promote and aid in the establishment of local programs to the aging.**[~~2006 Ky. Acts ch. 252 requires the cabinet to promulgate administrative regulations 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 administra-

tive regulation establishes the Kentucky Family Caregiver Program.

Section 1. Definitions. (1) "District" is defined by KRS 205.455(4).

(2) "Exception committee" means a committee comprised of three (3) district directors or their designee:

(a) To consider an applicant's request for an exception as outlined in Section **6**[~~7~~] of this administrative regulation; and

(b) Which is selected each fiscal year by the Executive Director of the Kentucky Council of Area Development Districts.

(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) "Formal support system" means a service obtainable through public or private service programs.

(5) "Grandchild" means a grandparent's grandchild:

(a) Through blood, marriage, or adoption; and

(b) Who is no more than eighteen (18) years of age.

(6) "Grant" means a payment to a grandparent for services specified in Section **7(3)(a) or 8**[~~8(3)(a) or 9~~] of this administrative regulation and based on:

(a) Need; and

(b) Actual cost.

(7) "Household" means an individual or group of individuals who are living together in a principal residence as one (1) economic unit.

(8) "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.

(9) "Informal support system" means any care provided to an individual which is not provided as part of a public or private formal service program.

(10) "Local resolution" means a phone conversation or meeting between a grandparent and district to resolve the grandparent's dispute against denial of eligibility.

(11) "National Family Caregiver Support Program" means the program established by 42 U.S.C. 3030s-1.

(12) "Primary caregiver" means a grandparent providing full time care for **that person's**[~~their~~] grandchild.

(13) **"Respite services" is defined by KRS 205.455(12)**[~~"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.

(14) "Supplemental services" means the services that a grandparent may receive in accordance with Section **8**[9] of this administrative regulation through application and grant or voucher process.

(15) "Support services" means the services that a grandparent may receive in accordance with Section **7**[8] of this administrative regulation through application and grant or voucher process.

(16) "Voucher" means a payment made directly to a vendor for the services specified in Sections **7(3)(a) or 8**[~~8(3)(a) or 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;~~

~~(d)~~] Reside with the grandchild who shall not be residing in the same household with the grandchild's parent, but may reside in a house owned by the grandchild's parent;

(d)[~~(e)~~] Not receive a monthly payment for Kinship Care in accordance with 922 KAR **1:130**[~~1:030~~]; and

(e)[~~(f)~~] Not have household income that exceeds 150 percent of the federal poverty level.

(2) A grandparent who has adopted a grandchild shall be eligible for the Kentucky Family Caregiver Program:

(a) If the grandparent is not eligible for other state or federal adoption **subsidies**[~~subsidy~~]; and

(b) For a period not to exceed one (1) calendar year from final order of adoption.

(3) **To apply or reapply for the Kentucky Family Caregiver Program, a grandparent shall complete, sign, and submit a DAIL-KFC-1 Application for Kentucky Family Caregiver Services**[~~An applicant shall complete, sign, and submit a DAIL-KFC-1 Application for Kentucky Family Caregiver Services~~]:

(a) To a local district of residence; and

(b) For each voucher or grant requested.

(4) An applicant shall receive a written notice of eligibility or non-eligibility from a district within thirty (30) days of meeting the requirements of subsections (1) and (3) of this section.

(5) A payment from the Kentucky Family Caregiver Program may affect the eligibility income requirements for receipt of a federal or state benefit assistance payment.

(6) If a child receives assistance from the Kentucky Children's Health Insurance Program or the Department for Medicaid Services, the child shall not be eligible to receive the medical services specified in Section **8(1)(e)**[~~9(5)~~] of this administrative regulation.

(7) National Family Caregiver Support Program participation shall not exclude participation in the Kentucky Family Caregiver Program.

Section 3.[~~Application. A grandparent shall apply or reapply for the Kentucky Family Caregiver Program:~~

~~(1) As specified in Section 2(3) of this administrative regulation;~~

~~(2) Through a local district of residence; and~~

~~(3) By signing a DAIL-KFC-1 Application for Kentucky Family Caregiver Services.~~

~~Section 4.~~] District Responsibilities. (1) A district shall review the DAIL-KFC-1 Application for Kentucky Family Caregiver Services to determine completeness of the following information:

(a) Demographics;

(b) Establishment of eligibility relationship between grandparent and grandchild;

(c) Household income verified with:

1. A federal tax form;

2. A W-2;

3. A pay stub; or

4. Other[~~verified~~] documentation of monthly gross income;

(d) Living arrangements of household;

(e) Residency;

(f) Need per grandchild; and

(g) Formal or informal **support systems**[~~supports~~].

(2) **A district shall consider applications on a priority basis, with applicants that did not receive services through the program in the past fiscal year, receiving a higher priority.**

(3)[~~A home visit shall be at the discretion of the district.~~

~~(3) A district shall consider a request for services in priority order based on the grandparent not served in the previous fiscal year from application.~~

~~(4)~~] A district shall:

(a) Develop a policy and procedure for:

1. Grandparent outreach of the Kentucky Family Caregiver Program;

2. Assurance of a grandparent's eligibility in accordance with Section 2(1) **and (2)** of this administrative regulation;

3. Informing a grandparent of the grandparent's rights and responsibilities; and

4. Client confidentiality and referrals;

(b) Develop a process for use of assistance, including a grant or voucher;

(c) Develop a process for:

1.[~~a.~~] Billing a participating vendor for provided services;

2.[~~b.~~] Monitoring and evaluation of the program; and

3. The review[~~c. Review~~] of invoices and receipts for approved items and expenditures;

(d) Notify the cabinet in writing if the process specified in paragraph (c) of this subsection changes;

(e) Make payment for the services specified in Sections **7(3)(a)**

and 8[~~8(3)(a) and 9~~] of this administrative regulation through a **voucher or grant**[~~:~~

~~1. Voucher; or~~

~~2. Grant~~];

(f) Document and maintain a case file for a grandparent that:

1.[~~Includes assignment of a case number;~~

~~2.~~] Is kept in a locked cabinet;

2.[~~3.~~] Has all documentation regarding the grandparent secured to the file; **and**

3.[~~4.~~] Includes at a minimum:

a. The DAIL-KFC-1 **Application for Kentucky Family Caregiver Services**[~~Kentucky Family Caregiver Program application~~];

b. Consent and release of information;

c. Verification of eligibility;

d. Verification that the grandparent was informed of the grandparent's rights and responsibilities;

e. Documentation showing services provided;

f. Documentation of referrals and other resources given to the grandparent;

g. Progress notes or case notes, if applicable;

h. Correspondence, if applicable;

i. Documentation of grievance, local resolution, or hearing, if applicable; [~~and~~]

j. Documentation of service termination, if applicable; **and**

k. Assignment of a case number;

(g) Provide the department with documentation of services provided and the number of grandparents served through the Kentucky Family Caregiver Program **in that district**;

(h) Verify with a local department for community based services office:

1. That a grandchild or grandparent is not receiving a monthly payment specified in Section 2(1)(e) of this administrative regulation;

2. Any type of state or federal benefit assistance payment a grandparent or grandchild is receiving; and

3. Medical services a grandchild receives through the Kentucky Children's Health Insurance Program or the Department for Medicaid Services;

(i) Provide for appeal procedures in accordance with Section **11**[~~12~~] of this administrative regulation;

(j) Provide referral and assistance **to access**[~~to~~] other community services needed by the grandparent or grandchild; and

(k) Maintain a current fiscal year waiting list for prioritizing a grandparent in the following year if the grandparent:

1. Applied for the current fiscal year;

2. Was not served in the current fiscal year; and

3. Reapplies for the program the following fiscal year.

Section **4.**[~~5.~~] Department Responsibilities. [~~(1)~~] The department shall:

(1)[~~(a)~~] Be the state-wide administrator for the Kentucky Family Caregiver Program;

(2)[~~(b)~~] Monitor a district at a minimum annually for assurance of compliance with the program requirements of this administrative regulation;

(3)[~~(c)~~] Allocate available funding; and

(4)[~~(d)~~] Provide technical and programmatic assistance, if needed.

[~~(2) The Kentucky Family Caregiver Program shall not supplant or replace services provided by a grandchild's formal or informal support systems.~~]

Section **5.**[~~6.~~] Kentucky Family Caregiver Payment. (1)(a) To the extent funds are available, the maximum total of assistance per grandchild, including a grant or voucher, shall be **no more than**[~~up to~~] $500 per grandchild and no more than $1,500 per household in any one (1) fiscal year.

(b) The applicant may request an exception to the $1,500 **allocation cap established in Section 6**[~~as outlined in Section 7~~] of this administrative regulation.

(2) Funds shall be allocated based on priority order as specified in Section **3(3)**[~~4(3)~~] of this administrative regulation.

(3) A grant or voucher shall not be given for services that occur before a district's establishment of a grandparent's eligibility.

(4) Prior approval with a district for counseling and supplemental services shall be required before actual purchase.

(5) If the Kentucky Family Caregiver Program funding is at capacity, an eligible applicant shall be placed on a waiting list and as funding becomes available be accepted for services in priority order as specified in Section **3(3)**[~~4(3)~~] of this administrative regulation.

Section **6.**[~~7.~~] Exceptions. (1) An applicant may request exceptions to receive Kentucky Family Caregiver services for[~~:~~

~~(a)~~] the $1,500 household allocation cap specified in Section **5(1)(a)**[~~6(1)~~] of this administrative regulation if a household request exceeds the cap based on number of grandchildren.[~~; or~~

~~(b) Services not otherwise specified in Section 9 of this administrative regulation.~~]

(2) A grant or voucher exceeding the household allocation cap specified in subsection (1) of this section shall not exceed $500 per grandchild.

(3)(a) **A district shall submit an exception request to the department within two (2) business days of the determination of eligibility as established in Section 2 of this administrative regulation.**

(4) The department shall submit the exception request the exception committee within two (2) business days of receipt of the request.

(5) An exception committee shall:

1. Make a decision to an exception request; and

2. Submit the decision to the department within five (5) business days of receipt of the district's request.

(b) The department shall notify the district within two (2) business days of receipt of the exception committee's decision.

(c) The district shall notify the applicant within two (2) business days of receipt from the department **of** the exception committee's decision.

(6) An applicant shall apply for the exception provided by this section, by using the DAIL-KFC-1 Application for Kentucky Family Caregiver Services.

Section **7.**[~~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 care giving role including:

(a) Individual counseling;

(b) Organization of a support group; and

(c) Caregiver training.

Section **8.**[~~9.~~] Supplemental Services. (1) Supplemental services related to the grandchild shall include:

(a) Child clothing and personal care needs;

(b) Respite **services provided by a caregiver or agency approved by the district.**[~~assistance~~] for the grandparent;

(c) Educational supplies or assistance documented by the grandchild's school of attendance;

(d) Required legal services which shall:

1. Be related to the grandchild's safety and stability; and

2. **Not include representation against any criminal charges**[~~Excludes unlawful activity~~];

(e) Medical and dental services, except for copays and premiums; and

(f) Furniture **to be used by the grandchild including a:**

1. Bed; or

2. Dresser[~~:~~

~~1. To be used only by the grandchild; and~~

~~2. Such as a:~~

~~a. Bed; or~~

~~b. Dresser~~].

(2) The applicant may request an exception for needs not otherwise specified as outlined in Section **6**[~~7~~] of this administrative regulation.

Section **9.**[~~10.~~] Grandparent Responsibilities. A grandparent shall:

(1) Provide a district with the information **required to deter-**

mine eligibity as specified in Section 2[~~(1)~~] of this administrative regulation;

(2) Comply with a district's application process as established in Section 2(3) of this administrative regulation;

(3) Comply with the district's policies for expenditures of assistance, including:

(a) A grant or voucher; or

(b) Submittal of **a** receipt for cost reimbursement, if applicable.

(4) Comply with **the appeal procedures established in Section 11**[~~appeal procedures of Section 12~~] of this administrative regulation **if making an appeal**; 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 **10.**[~~11.~~] Fraud. [~~(1)~~] A grandparent's fraudulent use of a voucher or grant may result in prosecution pursuant to KRS Chapter 514.[~~(2) An individual found to be fraudulent shall not be allowed to participate in the Kentucky Caregiver Program.~~]

Section **11.**[~~12.~~] Appeal Procedure. (1) A grandparent wishing to appeal denied eligibility for services shall first have a local resolution with the district of residence.

(2) If the grandparent is dissatisfied with the results of the local resolution, the grandparent may request a state administrative hearing in accordance with KRS Chapter 13B.

Section **12.**[~~13.~~] Incorporation by Reference. (1) "DAIL-KFC-1 Application for Kentucky Family Caregiver Services", edition 4/2010, is incorporated by reference.

(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.[~~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" means the program established by 42 U.S.C. 3030s-1.~~

~~(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 Sections 8(3)(a) or 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 shall not be residing in the same household with the grandchild's parent, but may 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 household income that exceeds 150 percent of the federal poverty level.~~

~~(2) An applicant shall sign and submit to a district a DAIL-KFC-1 Application for Kentucky Family Caregiver Services.~~

~~(3) An applicant shall receive a written notice of eligibility or noneligibility from a district within thirty (30) days of meeting the requirements of subsections (1) and (2) of this section.~~

~~(4) A payment from the Kentucky Family Caregiver Program may affect the eligibility income requirements for receipt of a federal or state benefit assistance payment.~~

~~(5) If a child receives assistance from the Kentucky Children's Health Insurance Program or the Department for Medicaid Services, the child shall not be eligible to receive the medical services specified in Section 9(5) of this administrative regulation.~~

~~(6) National Family Caregiver Support Program participation shall not exclude participation in the Kentucky Family Caregiver Program.~~

~~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 a DAIL-KFC-1 Application for Kentucky Family Caregiver Services.~~

~~Section 4. District Responsibilities. A district shall:~~

~~(1) Complete an assessment to include at a minimum the following:~~

~~(a) Demographic information;~~

~~(b) Establishment of eligibility relationship between grandparent and grandchild;~~

~~(c) Documentation of household income, using:~~

~~1. A federal tax form;~~

~~2. A W2;~~

~~3. A pay stub; or~~

~~4. Other verified documentation of monthly gross 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~~

~~(i) Identification of a grandparent's problem or need by using a DAIL-KFC-2 Kentucky Family Caregiver Program Plan of Care including:~~

~~1. Counseling in accordance with Section 8(3)(a) of this administrative regulation;~~

~~2. Supplemental services in accordance with Section 9 of this administrative regulation; and~~

~~3. Cost for each;~~

~~(2) Develop a:~~

~~(a) Policy and procedure for grandparent outreach of the Kentucky Family Caregiver Program;~~

~~(b) Policy and procedure for assurance of a grandparent's eligibility in accordance with Section 2(1) of this administrative regulation;~~

~~(c) Policy on client confidentiality and referrals;~~

~~(d) Process for use of assistance, including a grant or voucher;~~

~~(e) Process for billing a participating vendor for provided services; and~~

~~(f) Process for monitoring and evaluation of the program;~~

~~(3) Make payment for the services specified in Sections 8(3)(a) and 9 of this administrative regulation through a:~~

~~(a) Voucher; or~~

~~(b) Grant;~~

~~(4) Document and maintain a case file for each grandparent including assignment of a case number;~~

~~(5) Provide the department with documentation of services provided and the number served through the Kentucky Family Caregiver Program;~~

~~(6) Verify with a local department for community based services office:~~

~~(a) That a child or grandparent is not receiving a monthly payment specified in Section 2(1)(c) of this administrative regulation;~~

~~(b) Any type of state or federal benefit assistance payment a grandparent or grandchild is receiving; and~~

~~(c) Medical services a child receives through the Kentucky Children's Health Insurance Program or the Department for Medicaid Services;~~

~~(7) Provide for appeal procedures in accordance with Section 11 of this administrative regulation; and~~

~~(8) Provide referral and assistance to other community services needed by the grandparent or grandchild.~~

~~Section 5. Department Responsibilities. The department shall:~~

~~(1) Be the state-wide administrator for the Kentucky Family Caregiver Program;~~

~~(2) Monitor a district at a minimum annually for assurance of compliance with the program requirements of this administrative regulation;~~

~~(3) Allocate available funding; and~~

~~(4) Provide technical and programmatic assistance, if needed.~~

~~Section 6. Kentucky Family Caregiver Payment. (1) To the extent funds are available, the maximum total of assistance per grandchild, including a grant or voucher, shall be $750 in any one (1) fiscal year.~~

~~(2) Funds shall be allocated based on an identified need in accordance with Section 4(1) of this administrative regulation.~~

~~(3) A grant or voucher shall not be given for services that occur before a district's establishment of a grandparent's eligibility.~~

~~(4) Prior approval with a district for counseling and supplemental services shall be required before actual purchase.~~

~~(5) A waiting list shall be implemented for an applicant that:~~

~~(a) May exceed the allocated funding; and~~

~~(b) Shall be:~~

~~1. Accepted:~~

~~a. In accordance with Section 2(2) of this administrative regulation; and~~

~~b. As funds are available; and~~

~~2. Maintained for only the current fiscal year.~~

~~Section 7. Relocation. If a grandchild receiving services moves to another district within the same fiscal year, the grandparent may receive assistance, including a grant or voucher payment:~~

~~(1) Minus an amount already received in the current fiscal year; and~~

~~(2) If:~~

~~(a) The eligibility requirements of Section 2(1) of this administrative regulation are met; and~~

~~(b) There are available funds for the fiscal year in the new district.~~

~~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 care giving 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 Procedure. (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 with the notice a DAIL-KFC-3 Request for Hearing, Local Resolution.~~

~~(2)(a) An applicant may complete and file the DAIL-KFC-3 Request for Hearing, Local Resolution with the district within thirty (30) days after receipt of the written notice for denial of eligibility.~~

~~(b) If the notice is mailed, the date of the notice shall be the date mailed; otherwise it shall be the date of delivery.~~

~~(3) Upon receipt of the DAIL-KFC-3 Request for Hearing, Local Resolution, the district shall:~~

~~(a) Review; and~~

~~(b) If requested, schedule a local resolution with the applicant.~~

~~(4) 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) Within five (5) days of completion of the local resolution, the district regional manager or designee shall:~~

~~(a) Issue a decision by written notification, using certified mail delivery, to the return address specified on the DAIL-KFC-3 Request for Hearing, Local Resolution; and~~

~~(b) Specify whether denied eligibility is rescinded or upheld.~~

~~(6) If an applicant requests a hearing, the district shall submit to the Families and Children Administrative Hearings Branch the DAIL-KFC-3 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.~~

~~(8) 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) "DAIL-KFC-1 Application for Kentucky Family Caregiver Services", edition 1/08;~~

~~(b) "DAIL-KFC-2 Kentucky Family Caregiver Program Plan of Care", edition 1/08; and~~

~~(c) "DAIL-KFC-3 Request for Hearing, Local Resolution", edition 1/08.~~

~~(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.~~]

DEBORAH S. ANDERSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: January 12, 2010
FILED WITH LRC: January 13, 2010 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

NONE

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 327.050, 327.060, 327.080
STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine whether physical therapist applicants meet the qualifications and standards required by KRS Chapter 327, and 327.040(13) allows the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. Applications shall be accepted for credentialing based on successful completion by the applicant of one (1) of the following processes:
(1) Examination;
(2) Endorsement; or
(3) Reinstatement.

Section 2. To be eligible for the examination, the applicant shall:
(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;
(2) Submit certification of completion by the educational administrator of that program;
(3) Have completed an educational course at least two (2) hours in length that has been approved by the Cabinet for Health Services (CHS) on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS;
(4) Have successfully completed the Jurisprudence Exam;
(5) Submit a complete and notarized application for credentialing that includes a photo taken within one (1) year;
(6)[~~(5)~~] Submit the correct, nonrefundable fee as required in 201 KAR 22:135;
(7)[~~(6)~~] A request for a reasonable accommodation in testing due to a documented disability shall be submitted on an Applicant Special Accommodations Request Form; [~~and~~]
(8)[~~(7)~~] Register for the examination; and
(9) After three (3) failed attempts in taking the examination, complete a board-approved remediation plan based on identified deficits as provided on the FSBPT Examination Performance Feedback report prior to registering for each subsequent examination. The written remediation plan shall consist of specific measures to be taken to address the deficient areas and may include one or more of the following:
(a) Consultation with faculty at an accredited physical therapy educational program;
(b) Counseling regarding test-taking strategies; and
(c) A physical therapy review course, practice exam, and assessment tool.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:
(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and
(2) Register with the Federation of State Boards of Physical Therapy (FSBPT) Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for credentialing by endorsement, the applicant shall:
(1) Meet the requirements established in Section 2(1), (2), (3), (4), [~~and~~] (5), and (6) of this administrative regulation;
(2) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky.
(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75).
(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;
(3) Have an active credential in this profession in another jurisdiction; and
(4) Have verification of credentials showing the credential has never been revoked, suspended, on probation, or under disciplinary review in another jurisdiction.

Section 5. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 6. A credential issued by the board shall be in effect until March 31 of the next uneven-numbered year.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Credentialing", February 2009; and
(b) "Applicant Special Accommodations Request Form", February 2009.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [~~State Board of Physical Therapy,~~] Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA KLUSCH, Executive Director
APPROVED BY AGENCY: March 18, 2010
FILED WITH LRC: April 14, 2010 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2010, at 10 a.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five 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 June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, 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 administrative regulation establishes the eligibility and application procedures for physical therapists and physical therapist assistants.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 327.040.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the qualifications and procedures for applying for a license to practice physical therapy in the Commonwealth.
(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: It provides the qualifications and procedures for applying for a license to practice physical therapy 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 limits the number of times an applicant may take the national examination before a remediation plan is required and to require the Jurisprudence Examination for initial licensure.

(b) The necessity of the amendment to this administrative regulation: To ensure an applicant is qualified to take the examination and know the Kentucky statutes and regulations before practicing in the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help ensure the board is protecting the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The failed candidates will need to set up a remediation plan to help them successfully pass the national examination which is a minimum requirement in protection of the public.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Their successful passage of the national examination will far out weigh their cost in their remedial plan.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): To become licensed to practice physical therapy.

(5) Provide an estimate of how much it will cost the administrative 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.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapists and physical therapist assistants examination applicants.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and 327.050

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 327.010(1), (2), 327.070

STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means the number of hours spent participating in an activity.

(2) "Continued competency" means a planned learning experience relating to the scope of physical therapy practice in KRS 327.010(1), whether the subject is intervention, examination, research, documentation, education, or management of health care delivery systems.

(3) "Jurisprudence Examination" means an open book tutorial provided by the board on current physical therapy laws and administrative.

(4) "Practice in the field of physical therapy" means direct patient care, management of patient care, research, or teaching in a physical therapy educational program.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least eighteen (18) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than ten (10) hours may be earned from Category 2 described in subsection (3) of this section.

(b) For a Physical Therapist Assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least ten (10) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than eight (8) hours may be earned from Category 2 described in subsection (3) of this section.

(2) Category 1 continued competency shall be any of the following:

(a) Completion of courses, seminars, workshops, symposia or home study courses consisting of at least three (3) contact hours that have been approved by board, the board's designee, APTA or its components, other health professional licensing boards recognized by the board, or any other physical therapy licensing agency;

(b) Completion or auditing of an accredited postsecondary educational institution credit course.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(c) Presentation of continuing education courses, workshops, seminars, or symposia that have been approved by KSBPT or its designee;

(d) Authorship of research article, manuscript or scientific paper, published in the biennium and related to physical therapy, fifteen (15) contact hours with a maximum of two (2) events per biennium;

(e) A presented scientific poster, scientific platform presentation related to physical therapy ten (10) contact hours per event with a maximum of two (2) events per biennium;

(f) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder, but not more than twenty (20) contact hours per biennium;

(g) Certification or recertification of clinical specialization within the scope of physical therapy practice. Twenty-eight (28) contact hours shall be awarded per biennium;

(h) Completion of a clinical residency program, or clinical fellowship program, but not more than five (5) contact hours for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(i) Engaging in the practice of physical therapy as defined by KRS 327.010(2) at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(j) Engaging in the instruction in a CAPTE accredited physical therapy or physical therapist assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium.

(k) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(l) Election or appointment to a position of the KPTA, APTA or Federation of State Boards of Physical Therapy (FSBPT) as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; or

(m) Member of a committee or task force for one (1) of the organizations in paragraph (j) or (k) of this subsection. One (1) contact hour shall be awarded per biennium.

(3) Category 2 continued competency shall be any of the following:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel or symposium. One (1) contact hour for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE approved educational program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy inservice or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Completion of other applicable courses consisting of less than three (3) hours in length. One (1) contact hour for each hour of credit shall be awarded per biennium;

(f) Participation in community service related to health care. A maximum of two (2) contact hours of continued competency shall be awarded for two (2) hours per biennium; or

(g)[(f)] Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of three (3) years from the end of the biennium;

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities satisfactory to the board; and

(c) Any licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities may be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee may be granted a temporary hardship exemption for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Extension of Time for Completion of Continuing Competency Form; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

a. Age;

b. Disability;

c. Medical condition;

d. Financial condition; or

e. Other clearly mitigating circumstance.

(b) A licensee may be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Extension of Time for Completion of Continuing Competency Form by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

2. Pays a fee of $250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continuing competency requirements by the following July 1.

Section 3. Incorporation by Reference. (1) "Extension of Time for Completion of Continued Competency Form", 12/07, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA E. KLUSCH, Executive Director

APPROVED BY AGENCY: March 18, 2010

FILED WITH LRC: April 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2010 at 10 a.m. (EST) at 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five 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 June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, 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 administrative regulation assist in assuring safe and effective practices for the safety and welfare of the public by implementing continued competency.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 327.040(10).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for continued competency requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for renewal requirements for credential holders.

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

(a) How the amendment will change this existing administrative regulation: It adds another category for continuing competency courses less than three hours in length.

(b) The necessity of the amendment to this administrative regulation. The necessity is to clarify the course approval process for continued competency requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of continued competency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4100.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The credential holders are required to show competency during the biennial renewal period and the amendment clarifies those requirements.

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

(c). As a result of compliance, what benefits will accrue to the entities identified in question three: It will allow for credit to be given for courses less than three hours.

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

(a) Initially: There will be no additional costs to the board.

(b) On a continuing basis: There will be no additional costs to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs are minimal for implementing and enforcing this amendment and will be funded by licensure fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(10)

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new costs are anticipated.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

201 KAR 22:135. Fees.

RELATES TO: KRS 327.050(2), (8), 327.075(1), 327.080(1)

STATUTORY AUTHORITY: KRS 327.040(11), (13), 327.050(2), (8), 327.075(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.050(2) and (8) require the board to establish fees for application and renewal of licenses for physical therapists, and KRS 327.075(1) requires the board to establish a reinstatement fee. KRS 327.040(13) authorizes the board to establish reasonable fees for the certification, renewal, and endorsement of physical therapist assistants. This administrative regulation establishes the fees required to apply for a credential by application, reinstatement, or renewal.

Section 1. Payment of Fees. (1) Except as provided in subsection (2) of this section, an application fee shall be:

(a) Made payable as required by KRS 327.080(1); and

(b) Paid by:

1. Cashier's check;

2. Certified check; or

3. Money order.

(2) A renewal application fee shall be paid:

(a) As required by subsection (1) of this section; or

(b) By personal check.

Section 2. Licensure fees shall be[~~Fees. The fee for~~]:

(1) Initial credentialing by application $200[~~shall be $170~~];

(2) Reinstatement application $180[~~shall be $150~~] plus the impaired practitioner's assessment as set forth in 201 KAR 22:140, Section 1; and

(3) Renewal application $130[~~shall be $100~~] plus the impaired practitioner's assessment as set forth in 201 KAR 22:140, Section 1.

Section 3. Other administrative fees shall be:

(1) Verification of licensure twenty (20) dollars;

(2) Billfold license fifteen (15) dollars;

(3) Wall certificate twenty-five (25) dollars;

(4) Licensure mailing list on a CD or by email $100; and

(5) Licensure mailing labels $150.

REBECCA E. KLUSCH, Executive Director

APPROVED BY AGENCY: April 7, 2010

FILED WITH LRC: April 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2010, at 10 a.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five 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 June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, 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 administrative regulation establishes payment of licensure and renewals fees for physical therapists and physical therapist assistants.

(b) The necessity of this administrative regulation: The regulation is necessary to implement provisions of KRS 327.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It sets the fees for licensure and renewal for physical therapists and physical therapist assistants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation apprises interested individuals of the fees charged by the board.

(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 increases fees for application, renewal, and reinstatement for physical therapists and physical therapist assistants, as well as establish other miscellaneous fees.

(b) The necessity of the amendment to this administrative regulation: In order to meet budget without requesting General Fund monies.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set fees for licensure.

(d) How the amendment will assist in the effective administration of the statutes: Due to the transfer of restricted agency funds to the General Fund in 2009, the increase of fees are necessary to carry out the duties of KRS Chapter 327 in protecting the public without requesting General Fund monies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4,300 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3), will be required to pay an additional sum of $30 every two years ($15 per year) for renewal, $30 for new applicants whether by examination, endorsement or reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities identified in question (3), initial license and reinstatement fees will increase by $30 and biennial renewal fee will increase $30.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals affected will continue to be served in an efficient manner by the board and staff.

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

(a) Initially: No new costs will be incurred by the change.

(b) On a continuing basis: No new costs will be incurred by the change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As this regulation establishes fees, no additional funding is required for implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does establish fees and increases some fees in order to carry out the duties of KRS Chapter 327 to protect the public.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable 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? This administrative regulation would impact physical therapists and physical therapist assistants credentialed by the board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and 327.050 authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? For fiscal year ending 2011, estimate increase of revenues by $125,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? 2012 $12,000; 2013 $126,000.

(c) How much will it cost to administer this program for the first year? Very minimal administrative costs, if any, in revising forms and Web site information.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.

RELATES TO: KRS 150.010(32), 150.450(2)[~~, EO 2008-516~~]

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to regulate the size or type of devices and methods used to take fish and wildlife, including the places where they may be taken. KRS 150.175(3), (4) authorizes

the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags. This administrative regulation is necessary to establish restrictions on the use of gill and trammel nets at Kentucky and Barkley Lakes.[~~wildlife, including rough fish and the places where they may be taken. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet. This administrative regulation is necessary to specify restrictions on the use of gill and trammel nets.~~]

Section 1. Definitions. (1) "Bar mesh size" means the distance between two (2) knots on a line of a net.

(2) "Immediate family" means the person's spouse, mother, father, grandparent, son, or daughter.

(3) "Permit" means a special commercial fishing permit.

(4) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin.

(5) "Rough fish" is defined by KRS 150.010(32).

(6) "Whip set" means a gill net or a trammel net rigged so it is free-floating.

Section 2. Permit Requirements. (1) A person shall possess a valid Kentucky commercial fishing license to obtain or retain a permit throughout the special commercial fishing season.

(2) [~~For the 2008-2009 special commercial fishing season,~~] The department shall not issue more than twenty-five (25) permits.

(3)[~~(a)~~] A permit holder shall:

(a) Submit a completed permit application to the department, along with permit fees established[~~1. Submit a completed permit application to the department, along with permit fees as stipulated in~~] 301 KAR 3:022, on or before November 1 to retain the permit privilege; and

(b)[~~2.~~] Ensure that mailed permit applications are postmarked on or before November 1.

(4)[~~(b)~~] The ability to purchase a permit shall only be transferred to immediate family members.

(5) New permits shall not be issued until the total number of permits is[~~(c) New permits shall not be issued until the total number of permits has been reduced to~~] less than twenty-five (25).

(6) A lottery drawing shall be used to select new permittees if the total number of permits is[~~(d) A lottery drawing shall be used to select new permittees once the number of permits has been reduced to~~] less than twenty-five (25).

(a) A person applying for a vacant permit shall:

1. Submit to the department a completed Application for a Special Commercial Fishing Permit by November 1, along with the appropriate fee established in 301 KAR 3:022.

2. Ensure that a mailed permit application is postmarked on or before November 1.

(b) The maximum number of permits issued to nonresidents shall be seven (7).

Section 3. Permit Requirements. (1) A person shall possess and carry a valid permit and a commercial fishing license:

(a) If using a gill net or trammel net to take rough fish:

1. From November 1 through March 31 at both Kentucky and Barkley Lakes; and

2. In the portions of Kentucky and Barkley Lakes open to commercial fishing as established in 301 KAR 1:150.

(b) If transporting a gill net or trammel net; and

(c) If selling fish taken with a gill net or trammel net.

(2) A person shall:

(a) Tag a gill net or trammel net as established in KRS 150.175(4);

(b) Not use a gill net or trammel net with a bar mesh size smaller than three and five-tenths (3.5) inches or larger than four and five-tenths (4.5) inches, except:

1. A whip set may have a minimum bar mesh size of three (3) inches; and

2. Beginning on November 15 and running through March 31 at both Kentucky and Barkley Lakes, gill and trammel nets with a bar mesh size larger than four and five-tenths (4.5) may be used in stationary sets only;

(c) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;

(d) Tend each net, except whip sets, at least once every twenty-four (24) hours;

(e) Not leave whip sets unattended;

(f) Affix a decal supplied by the department to each side of the boat or motor used for fishing under this permit so that the decal is clearly visible while fishing with a gill net or a trammel net;

(g) Not dispose of any commercially caught rough fish at public boat launch areas; and

(h) Not harvest paddlefish at both Kentucky and Barkley Lakes during the special commercial fishing season if the paddlefish are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin.

(3) A permit holder may be accompanied by two (2) unlicensed helpers, who shall be:

(a) In the same boat with the permit holder if fishing with a gill net or a trammel net; or

(b) Accompanied by the permit holder if transporting or selling fish taken under the permit.

(4) A permit holder shall:

(a) Maintain an accurate record of daily fishing activity; and

(b) Submit a completed monthly report to the department by the tenth day of the following month on the Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department.

Section 4. Paddlefish Harvest Requirements. (1) A person who possesses a valid permit shall be allowed to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a Commercial Roe-bearing Fish Harvester's Permit.

(2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all Commercial Roe-bearing Fish Harvester Permit reporting requirements established in 301 KAR 1:155, Section 4(4).[~~1. A person wishing to apply for a vacant permit shall:~~

~~a. Submit a completed Application for a Special Commercial Fishing Permit to the department, along with permit fees, as stipulated in 301 KAR 3:022, on or before November 1 of the fishing season to be included in the lottery drawing; and~~

~~b. Ensure that mailed permit applications are postmarked on or before November 1.~~

~~2. More than seven (7) of the maximum number of permits issued shall not be nonresident permits.~~

~~Section 3. A person shall have in possession a valid permit and a commercial fishing license while using a gill net or a trammel net to take rough fish:~~

~~(1) From November 1 through March 31 at both Kentucky and Barkley lakes; and~~

~~(2) In the portions of Kentucky and Barkley lakes open to commercial fishing as specified in 301 KAR 1:150.~~

~~Section 4. A person using a gill net or a trammel net in the waters specified in Section 3 of this administrative regulation shall:~~

~~(1) Before fishing and after meeting requirements in Section 2 of this administrative regulation, apply for a permit by submitting a completed Application for a Special Commercial Fishing Permit that shall be provided by the department;~~

~~(2) Have the permit in possession while:~~

~~(a) Fishing with a gill net or a trammel net;~~

~~(b) Transporting a gill net or a trammel net; or~~

~~(c) Selling fish taken with a gill net or a trammel net;~~

~~(3) Tag a gill net or a trammel net as specified in KRS 150.175(4);~~

~~(4) Not use a gill net or a trammel net with a bar mesh size smaller than three and five-tenths (3.5) inches or larger than four and five-tenths (4.5) inches, except:~~

~~(a) A whip set may have a minimum bar mesh size of three (3) inches; and~~

~~(b) Beginning on November 15 and running through March 31 at both Kentucky and Barkley lakes, gill and trammel nets with a bar mesh size larger than four and five-tenths (4.5), but less than~~

~~or equal to six (6) inches may be used in stationary sets only;~~

~~(5) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;~~

~~(6) Tend each net, except whip sets, at least once every twenty-four (24) hours;~~

~~(7) Not leave whip sets unattended;~~

~~(8) Affix a decal supplied by the department to each side of the boat or motor used for fishing under this permit so that the decal is clearly visible while fishing with a gill net or a trammel net;~~

~~(9) Not dispose of any commercially caught rough fish at public boat launch areas; and~~

~~(10) Not harvest paddlefish at both Kentucky and Barkley lakes during the special commercial fishing season that are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin.~~

~~Section 5. The permit holder may be accompanied by two (2) unlicensed helpers, who shall be:~~

~~(1) In the same boat with the permit holder while fishing with a gill net or a trammel net; or~~

~~(2) Accompanied by the permit holder while transporting or selling fish taken under the permit.~~

~~Section 6. The permit holder shall:~~

~~(1) Maintain an accurate record of daily fishing activity; and~~

~~(2) Submit a completed monthly report to the department by the tenth day of the following month on the Monthly Report of Commercial Fish Harvest in Kentucky form that is provided by the department.~~

~~Section 7. Paddlefish Harvest Requirements. (1) A person who possesses a valid permit shall be permitted to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a Roe-bearing Fish Harvester's Permit.~~

~~(2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all commercial rose-fish harvester permit reporting requirements as stipulated in 301 KAR 1:155, Section 4(4)(d)4. and 5.~~]

Section 5. Permit Suspension, Revocation,[~~8. Permit Revocation~~] and Renewal.

(1) The department shall suspend the permit of a person who fails to complete and submit to the department a Monthly Report of Commercial Fish Harvest or a Daily Commercial Roe Harvest Report for each transaction involving a buyer permittee by the following methods:

(a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.

(b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.

(c) If a third or subsequent time[~~The third and subsequent times~~] during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.

(2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.

(3) The department shall revoke or not renew a person's permit for a period of two (2) years, for[~~the permit for a period of two (2) years, of a person~~] the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear;

(b) Knowingly placing commercial fishing gear in a restricted area;

(c) Harvesting [~~of~~] prohibited species of fish;

(d) Commercially fishing, as established by 301 KAR 1:150, in waters not open to commercial fishing; or

(e) Knowingly [~~nonreporting or~~] falsifying commercial harvest data.

(4) A person whose permit has been revoked or not renewed shall be eligible to enter the lottery drawing [~~described in Section 2(2)(d) of this administrative regulation~~] following the revocation period only if a permit is available based on the twenty-five (25) permit restriction established in Section 2 of this administrative regulation.

(5) A person may request an administrative hearing pursuant to KRS Chapter 13B if a permit is:

(a) Denied;

(b) Suspended;

(c) Not renewed; or

(d) Revoked.

Section 6.[~~9.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for a Special Commercial Fishing Permit", 2007;

(b) "Monthly Report of Commercial Fish Harvest in Kentucky", 2008; and

(c) "Daily Commercial Roe-Bearing Fish Harvester's Transaction Report", 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY KINMAN, Deputy Commissioner
For JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: April 8, 2010
FILED WITH LRC: April 13, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2010, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made 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 June 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 441, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking rough fish during the special net commercial fishing season from both Kentucky and Barkley lakes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fishery resources and regulate the taking of rough fish from Kentucky and Barkley lakes by use of gill nets and trammel nets during the special net commercial fishing season.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations necessary to regulate commercial fishing in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by defining the requirements for commercial fishing during the special net commercial fishing season at Kentucky and Barkley lakes.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment relaxes the requirements on the size of mesh that can legally be used to harvest rough fish from Kentucky and Barkley lakes during the special net commercial fishing season. Special net commercial fishing permittees will now be allowed to fish gill nets with mesh sizes greater than 6 inches.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give special net commercial fishing permittees the ability to selectively harvest larger legal sized paddlefish. The ability to use the larger mesh gill nets will reduce catch and release mortality of the smaller sized paddlefish as these smaller fish are less likely to be caught in the larger mesh nets.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently only 25 special net permittees that may be affected by this amendment. Not all of the permittees report paddlefish harvest from Kentucky and Barkley lakes during the special net commercial fishing season.

(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: If desired, a special net permittee will now be allowed to use gill nets with mesh sizes that are larger than 6 inches.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this amendment, permit holders will be able to harvest larger paddlefish from Kentucky and Barkley lakes during the special net commercial fishing season. The use of the larger mesh gill nets will reduce mortality of smaller paddlefish.

(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 as a result of this amendment.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because all special commercial fishing permittees are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the Department to promulgate administrative regulations necessary to regulate commercial fishing in the Commonwealth of Kentucky.

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 new revenues will be generated during the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

STATUTORY AUTHORITY: KRS 150.025, 150.620

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

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

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

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

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

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

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

Section 2. This administrative regulation shall establish exceptions to the statewide requirements established in 301 KAR 2:122, 2:251, and 3:010.[~~Section 1. The provisions of 301 KAR 2:122, 301 KAR 2:251, and 301 KAR 3:010 shall apply on a Wildlife Management Area unless specified otherwise by this administrative regulation.~~]

Section 3.[~~2.~~] On a Wildlife Management Area owned or managed by the department:

(1) A person shall wear hunter orange clothing if a firearm is allowed for deer hunting, as established in 301 KAR 2:172[~~as specified in 301 KAR 2:172 when a firearm is allowed for deer hunt-~~

~~ing~~].

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

(a) Waterfowl; or

(b) Raccoon or opossum at night.

(3) There shall be a free youth small game hunting week for[~~Free youth week. For~~] seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting license. [~~Statewide requirements and bag limits apply.~~]

(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may trap without a trapping license[~~Free youth trapping week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may trap without a hunting license or permit. Statewide requirements and bag limits apply~~].

Section 4. Exceptions on Specific Public Areas.[~~3. Exceptions on Specific Wildlife Management Areas.~~] (1) Barren River Wildlife Management Area.

(a) The WMA shall be considered to be entirely within the Easter Zone, as established in 301 KAR 2:122;

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

(c)[~~Northern bobwhite and rabbit: closed after December 31. Barren River WMA shall be considered to be entirely within the Eastern Northern bobwhite Zone.~~

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

[~~1. Hunt with a breech-loading firearm;~~

~~2. Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine.~~]

(2) Beaver Creek WMA, including private inholdings.[~~Wildlife Management Area, including private inholdings.~~]

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

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

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

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

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

(4) Cane Creek WMA, including private inholdings[~~Wildlife Management Area, including private inholdings~~].

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

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

(5) Cedar Creek Lake WMA[~~Wildlife Management Area~~]:

(a) Rabbit season shall be[~~Rabbits:~~] closed after December 31;

(b) Squirrel season shall coincide with the statewide season; and[~~Squirrels: open under statewide season; and~~]

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

(6) Clay WMA.

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

(b) Rabbit season shall be closed after December 31;

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

(d) Pheasant may be taken [~~specified in Section 4 of this administrative regulation.~~

~~(a) Northern bobwhite and rabbit: closed after December 31.~~

~~(b) Grouse: October 1 through December 31.~~

~~(c) Pheasant:~~] beginning on the Tuesday following the pheasant quota hunt through December 31.

1. Any person with a valid hunting license may take a pheasant; and

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

(e)[~~, pheasant shall be a legal game species and may be taken on this area with a valid Kentucky hunting license. The daily limit shall be three (3) birds of either sex per hunter.~~

~~(d)~~] Quota fox hunting field trials:

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

2. Each event shall be limited to 250 participants[~~Participants shall be limited to 250 per event~~].

3. The area shall be closed to nonparticipants.

4. A participant shall:

(a) Wear a laminated identification badge issued by the department during the event; and

(b) Return the laminated badge at the close of the event.[~~Participants shall wear laminated identification badges issued by the department during the event and return the laminated badges at the close of the event to department personnel.~~]

(7) Curtis Gates Lloyd WMA[~~Lloyd/Mullins—Wildlife and Recreation Area~~].

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

(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August except if[~~while~~] squirrel hunting.

(8) Dix River WMA[~~Wildlife Management Area~~]:

(a) [~~Squirrel: statewide.~~

~~(b)~~] Northern bobwhite and rabbit seasons shall be closed after[~~: November 1 through~~] December 31.

(b) Grouse season shall be open from[

~~(c) Grouse:~~] October 1 through December 31.

(9) Fleming WMA[~~Wildlife Management Area~~].

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

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

(10) Green River Lake WMA[~~Wildlife Management Area~~].

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

(b) [~~The area shall be closed for four (4) consecutive days beginning on the third Friday in November to all hunting except archery deer hunting and the pheasant quota hunt specified in Section 4.~~

~~(a)~~] Northern bobwhite and rabbit seasons shall be[~~:~~] closed after December 31. [~~(b) Grouse: closed to hunting and trapping.~~]

(c) Pheasant.

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

2. The daily limit per hunter shall be three (3) birds of either sex.[~~Pheasants: beginning on the Tuesday following the pheasant quota hunt through December 31, pheasant shall be a legal game species and may be taken on this area with a valid Kentucky hunting license. The daily limit shall be three (3) birds of either sex per hunter.~~]

(11) Higginson-Henry WMA. Northern bobwhite and rabbit seasons shall be[~~Wildlife Management Area. Northern bobwhite and rabbit:~~] closed after December 31.

(12) Kleber WMA. Northern bobwhite and rabbit seasons shall be[~~Wildlife Management Area. Northern bobwhite and rabbit:~~] closed after December 31.

(13) Lake Cumberland WMA[~~Wildlife Management Area~~].

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

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

(14) Mill Creek WMA. Northern bobwhite and rabbit seasons shall be[~~Wildlife Management Area. Northern bobwhite and rabbit:~~] closed after December 31.

(15) Miller-Welch Central Kentucky WMA[~~Wildlife Management Area~~].

(a) Small game and furbearer hunting seasons shall be closed, except that squirrel season shall be open; and[~~Closed to small game and furbearer hunting except squirrels.~~]

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

1. From April 1 until the third Sunday in August; and

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

a. If a person is hunting squirrels during an open season; and

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

2. At other times of the year, except on a Tuesday, Thursday, Saturday, Sunday, when hunting squirrels, or during an authorized field trial.]

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

(17) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be[Wildlife Management Area. Northern bobwhite and rabbit:] closed after December 31.

(18)[(17)] Paul Van Booven WMA[Wildlife Management Area].

(a) Shall be closed to vehicle access from an hour after sunset until an hour before sunrise; and[Closed to vehicle access from an hour after sunset until an hour before sunrise.]

(b) Shall be closed to Northern bobwhite hunting.

(19)[(18)] Pennyrile Forest WMA.

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

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

(20)[Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).

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

(21)[Wildlife Management Area. A person shall not:

(a) Hunt with a breech-loading firearm; or

(b) Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine.

(20)] Robinson Forest WMA[Wildlife Management Area].

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

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

(22)[(21)] Taylorsville Lake WMA.[Wildlife Management Area.

(a) The area east of Van Buren Boat Ramp shall be closed to public access from November 1 through the last day of February.

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

(23) Tradewater WMA.

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

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

(24) West Kentucky WMA.

(a) A person shall not hunt on "A" tracts;

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

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

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

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

(d) A person shall not:

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

2. Operate a vehicle on Tract 6 from February 1 through April 16.

(25)[(22) Tradewater Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).

(23) West Kentucky Wildlife Management Area, McCracken County.

(a) A person shall not hunt on a tract designated by numbers followed by the letter "A".

(b) Northern bobwhite and rabbit:

1. Tracts 2, 3, 6 and 7: closed after December 31.

2. Tracts 1, 4 and 5: From one-half (1/2) hour before sunrise until 1 p.m., local time, January 1 through 10, unless maximum acceptable harvest levels have been reached prior to January 10 as determined from hunter use data. A hunter shall report daily to the area supervisor all hours hunted.

3. If a tract is closed before January 10, a sign announcing closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(c) A person shall not:

1. Use a rifle or ball or slug ammunition;

2. Allow an unleashed dog except while squirrel hunting; or

3. Operate a vehicle on Tract 6 from February 1 through April 16.

(24)] Yellowbank WMA[Wildlife Management Area]. Northern bobwhite and rabbit seasons shall be[:] closed after December 31.

Section 5.[4.] Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt:

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

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

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

(3)[Wildlife Management Area.

(2)] Hunt hours for each day shall be from 9 a.m. to 4 p.m. Eastern time.

(4)[(3)] During a quota hunt of clean-up hunt, a person shall wear orange clothing[the quota hunts or clean-up hunts, a person shall wear hunter orange] as specified in 301 KAR 2:172.

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

(6)[for the clean-up hunt and subsequent days open to pheasant hunting when the daily bag limit shall be three (3) birds of either sex.

(5)] Pheasant quota hunt procedures.

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

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

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

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

(c) A person who is drawn to hunt shall, by October 30, pay the permit fee established in 301 KAR 3:022 by:

(a) A check containing the drawn confirmation number;

(b) A money order enclosed with the draw confirmation number; or

(c) Credit card via the department's Web site as an applicant reviews the drawing results.

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

Section 6. Northern Bobwhite and Upland Bird Quota Hunts. (1) There shall be one (1) day northern bobwhite quota hunts on two (2) tracts of Peabody WMA on the following days:

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

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

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

(d) The first Saturday in January;

(e) The second Saturday in January; and

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

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

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

(b) The third Sunday in November;

(c) The second Sunday in December; and

(d) The third Tuesday in December.

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

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

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

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

basis.

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

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

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

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

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

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

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

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

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

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

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

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

1. Check;

2. Money order;

3. Visa; or

4. MasterCard.

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

(a) A department-issued quota hunt permit;

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

(c) A hunter education card, if required.

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

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

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

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

(7) The department may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.[~~shall apply for a quota hunt drawing through an automated telephone system by calling the number published in the current department Fall Hunting and Trapping Guide from a touch-tone telephone between September 1 and September 30 and shall:~~

~~1. Provide his or her Social Security number;~~

~~2. Indicate his or her choice of hunt days; and~~

~~3. Pay a three (3) dollar nonrefundable application fee for each application by:~~

~~a. Check;~~

~~b. Money order;~~

~~c. Visa; or~~

~~d. MasterCard.~~

~~(c) A single applicant may request a number of slots, up to five (5), to be a group for which he or she would like to apply. The applicant shall provide each party member's Social Security number and a total application fee for each person in the party.~~

~~(d) Persons who have not yet reached their 16th birthday by the date of the hunt shall apply as part of a party that includes at least one (1) adult.~~

~~(e) A person shall not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt.~~

~~(f) The department shall select hunters by a random drawing of all applicants.~~

~~(g) The successful applicant shall pay to the department by October 30, the fee, specified by 301 KAR 3:022, by one (1) of the following methods:~~

~~1. A check or money order with the confirmation number, Social Security number and hunts that are being paid for, written on the check or enclosed with the money order;~~

~~2. Web payment due when the applicant checks drawing results; or~~

~~3. If a group is successfully drawn, a single payment as specified in subparagraphs 1 and 2 of this paragraph, providing data for the entire group.~~

~~(h) Upon receipt of the check or money order, the department shall issue the appropriate pheasant quota hunt permits.~~

~~(i) A person participating in a quota hunt shall show:~~

~~1. A department-issued pheasant quota hunt permit;~~

~~2. A valid Kentucky hunting license or proof of exemption; and~~

~~3. A hunter education card, if required.~~

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

~~(k) A person shall comply with all quota hunt requirements or be ineligible to apply for any quota hunt the following year except for the elk quota hunt.~~

~~Section 5. Northern Bobwhite and Rabbit Quota Hunts. (1) There shall be Northern bobwhite and rabbit quota hunts on a tract of the Peabody Wildlife Management Area.~~

~~(2) The commissioner shall set the number of quota hunts and dates annually.~~

~~(3) Hunt hours for each day shall be from one-half (1/2) hour before sunrise to two (2) p.m.~~

~~(4) During the quota hunts, a person shall wear hunter orange as specified in 301 KAR 2:172.~~

~~(5) The daily bag limit per hunter shall be four (4) Northern bobwhite during Northern bobwhite quota hunts and four (4) rabbits during rabbit quota hunts.~~

~~(6) Quota hunt procedures.~~

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

~~(b) A person shall apply for a quota hunt drawing through an automated telephone system by calling the number published in the current department Fall Hunting and Trapping Guide from a touch-tone telephone between September 1 and September 30 and shall:~~

~~1. Provide his or her Social Security number;~~

~~2. Indicate his or her choice of hunt days; and~~

~~3. Pay a three (3) dollar nonrefundable application fee for each application by:~~

~~a. Check;~~

~~b. Money order;~~

~~c. Visa; or~~

~~d. MasterCard.~~

~~(c) A single applicant may request a number of slots, up to three (3), to be a group for which he or she would like to apply. The applicant shall provide each party member's Social Security number and a total application fee for each person in the party.~~

~~(d) A person who has not yet reached his or her 16th birthday by the date of the hunt shall apply as part of a party that includes at least one (1) adult.~~

~~(e) A person shall not apply more than one (1) time for a Northern bobwhite or rabbit quota hunt and shall not be drawn for more than one (1) Northern bobwhite or rabbit quota hunt.~~

~~(f) The department shall select hunters by a random drawing of all applicants.~~

~~(g) A person participating in a quota hunt shall show:~~

~~1. A department-issued quota hunt permit;~~

~~2. A valid Kentucky hunting license or proof of exemption; and~~

~~3. A hunter education card, if required.~~

~~(h) A party participating in the quota shall submit a hunting log within seven (7) days after the hunt.~~

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

~~(j) Quota hunts identified as mentor shall have a minimum of one (1) youth as a member of the party.~~

~~(k) A person shall comply with all quota hunt requirements or be ineligible to apply for any quota hunt the following year except~~

~~for the elk quota hunt.~~]

BENJY KINMAN, Deputy Commissioner
For JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: April 8, 2010
FILED WITH LRC: April 13, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2010, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made 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 June 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation identifies exceptions from the statewide regulations for hunting small game on public lands.

(b) The necessity of this administrative regulation: This administrative regulation insures the permanent and continued supply of small game species by protecting them from overharvest on public lands and facilitates hunter opportunity.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations governing hunting seasons, including small game species.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 150.025 and 150.620 authorize the Department of Fish and Wildlife Resources to regulate hunting and access on public lands.

(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 establish Upland Bird quota hunts on Clay Wildlife Management Area and eliminate rabbit quota hunts on Peabody Wildlife Management Area.

(b) The necessity of the amendment to this administrative regulation: The amendment will maximize opportunity for rabbit hunters on Peabody Wildlife Management Area and provide a high quality hunting experience on Clay Wildlife Management Area.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Hunters of small game species in the Commonwealth will be affected; there are more than 200,000 small game hunters in Kentucky. The Department of Fish and Wildlife Resources will coordinate and administer the quota hunts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This new regulation clearly defines the procedures for hunting small game on the Clay and Peabody Wildlife Management Areas.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Similar to previous quota hunts, each applicant will be required to pay a three (3) dollar application fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Conservation of the small game resource will perpetuate the hunting opportunity for those individuals interested in that pursuit on public lands.

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

(a) Initially: This administrative regulation change will result in a small cost for the department to administer.

(b) On a continuing basis: There will be a small additional cost to administer on a continuing basis.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: A three dollar fee will be required to apply for the Upland Bird quota hunts.

(9) TIERING: Is tiering applied? Tiering was not used because all hunters in Kentucky shall comply with the same hunting 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? The Kentucky Department of Fish and Wildlife Resources Wildlife and Law Enforcement Divisions will be affected 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 150.025 authorizes the department to promulgate administrative regulations regarding open seasons for the taking of wildlife and bag limits.

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 change will result in a small annual increase in revenue for the department (less than $500) in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation change will result in a small annual increase in revenue for the department (less than $500) in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be a small cost to implement this new administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small cost to implementing this new administrative regulation 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:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Amendment)

601 KAR 1:200. Administration of taxes imposed in KRS 138.655 through 138.7291.

RELATES TO: KRS 138.655-138.7291, 186.650, 49 C.F.R. 390.21, 49 U.S.C. 317

STATUTORY AUTHORITY: KRS 138.725(1), 281.600, 49 U.S.C. 317

NECESSITY, FUNCTION, AND CONFORMITY: [~~In accordance with~~] 49 U.S.C. 31705[~~317.05~~] and KRS 138.227 authorize the department to enter into the[~~, Kentucky is in conformance with the~~] provisions of the International Fuel Tax Agreement (IFTA). If a motor carrier operates in interstate commerce, the motor fuel taxes imposed by Kentucky statutes that[~~which~~] are subject to the provisions of IFTA are KRS 138.660(1) and (2). If the motor carrier operates exclusively in intrastate commerce, the taxes imposed by KRS 138.660(1) and (2) are not subject to the requirements of IFTA. The tax imposed by KRS 138.660(3) is not subject to the IFTA federal mandate. All three (3) of these taxes are administered under the provisions of KRS 138.655 through 138.7291. This administrative regulation establishes[~~is necessary to set forth~~] the administrative procedures for the implementation of the International Fuel Tax Agreement in Kentucky, establishes[~~to note~~] the differences between the requirements of IFTA and Kentucky state law, establishes if[~~to clearly establish, where applicable, when~~] the provisions of IFTA preempt state law, and provides[~~to provide~~] for uniformity in the interstate and intrastate administration of KRS 138.660(1) and (2) so as not to violate the interstate commerce clause of the United States Constitution.

Section 1. Definitions. (1) "Base jurisdiction" means the member jurisdiction where qualified motor vehicles are based for vehicle registration purposes and where:

(a) [~~Where~~] The operational control and operational records of the fuel tax licensee's qualified motor vehicles are maintained or can be made available; and

(b) [~~Where~~] Some travel is accrued by qualified motor vehicles within the fleet.

(2) "Fuel tax license" means either an IFTA license or a KIT license.

(3) "IFTA" means the International Fuel Tax Agreement.

(4) "IFTA license" means a motor fuel tax license issued in accordance with the IFTA Articles of Agreement and the IFTA [~~"~~]Procedures Manual.[~~"~~]

(5) "Jurisdiction" means a state of the United States, the District of Columbia, or a province or territory of Canada, or a state of the United Mexican States.

(6) "KIT license" means the Kentucky intrastate tax license issued by the Kentucky Transportation Cabinet to an intrastate motor carrier subject to the taxes imposed by KRS 138.660(1) and (2).

(7) "KYU license" means the Kentucky Highway Use License issued by the Kentucky Transportation Cabinet to a motor carrier subject to the tax imposed by KRS 138.660(3).

(8) "Motor carrier" means as defined in KRS 138.655(5).

(9) [~~"Over-the-road fuel" means fuel purchased from a retail distributor and placed directly into a qualified motor vehicle.~~

~~(10)~~](a) "Qualified motor vehicle" means a motor vehicle operated by a motor carrier that is used, designed, or maintained for the transportation of persons or property and that meets at least one (1) of the following criteria:

1. A single vehicle having two (2) axles and a gross vehicle weight or a registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms;

2. A single vehicle having three (3) or more axles, regardless of weight; or

3. A vehicle used in combination, if[~~when~~] the weight of the combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle weight or registered gross vehicle weight.

(b) A qualified motor vehicle shall not mean[~~include the following~~]:

1. A recreational vehicle;

2. A motor vehicle registered pursuant to KRS 186.050(4) or under another jurisdiction's law as a farm vehicle; or

3. A motor vehicle used to transport persons for hire.

(10)[~~(11)~~] "Quarterly reporting period" means a period of time consistent with the calendar quarterly periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(11)[~~(12) "Recreational vehicle" means a motor home, a pickup truck with an attached camper, a bus or similar motor vehicle if used exclusively for personal pleasure by an individual and which is not used in connection with any business endeavor.~~

~~(13)~~] "Tax-paid fuel" means motor fuel purchased either in bulk or over-the-road by a motor carrier on which the motor fuel taxes imposed by a jurisdiction are paid at the time of purchase.

Section 2. Governing IFTA Documents. The following IFTA documents prepared and adopted by the membership of the International Fuel Tax Association[~~, except where specifically otherwise identified in this administrative regulation regarding the administration for KIT licensees,~~] shall govern the administration of Kentucky's collection of the taxes imposed by KRS 138.660(1) and (2) unless otherwise specified in this administrative regulation:

(1) International Fuel Tax Agreement Articles of Agreement [~~as revised July 1998~~];

(2) International Fuel Tax Agreement Procedures Manual [~~as revised July 1998~~]; and

(3) International Fuel Tax Agreement Audit [~~Procedures~~] Manual [~~as revised July 1998~~].

Section 3. Fuel Tax License. (1)(a) A motor carrier that[~~which~~] operates a qualified motor vehicle in interstate commerce and [~~which~~] has Kentucky as the base jurisdiction for the operation of its qualified motor vehicles shall apply each year [~~apply~~] to the Division of Motor Carriers for an IFTA license or license[~~its~~] renewal.

(b) A motor carrier that[~~which~~] operates exclusively in intrastate commerce may apply for an IFTA license.

(c) An applicant for an[~~Application for the~~] IFTA license shall submit to the division Kentucky Training Application, TC Form 95-1[~~be on form TC 95-203, "Application for Motor Fuel Tax Licensing for IFTA Carriers" as revised February 1996~~].

(d)1. An incomplete or deficient Kentucky Trucking Application, TC Form 95-1, shall be returned to the applicant within thirty (30) days of submission to the cabinet.

2. The applicant shall correct any filing deficiencies and resubmit the form to the cabinet within thirty (30) days of receipt.

(2)(a) A motor carrier that[~~which~~] operates all of its qualified motor vehicles exclusively in intrastate commerce and that[~~which~~] does not apply for an IFTA license pursuant to subsection (1) of this section shall apply each year for a KIT license or its renewal.

(b) An applicant for a[~~Application for the~~] KIT license shall submit Kentucky Trucking Application, TC Form 95-1[~~be on form TC 95-200a, "Application for Kentucky Intrastate Tax License" as revised January 1996~~].

(c)1. An incomplete or deficient Kentucky Trucking Application, TC Form 95-1 shall be returned to the applicant within thirty (30) days of submission to the cabinet.

2.The applicant shall correct any filing deficiencies and resubmit the form to the cabinet within thirty (30) days of receipt.

(3)[~~(a)~~] A fuel tax license [~~issued~~] shall expire on December 31 of the year in which the license was issued.[~~(b) The Transportation Cabinet shall begin accepting renewal applications on November 1 of each year.~~]

(4)(a) The original or a legibly reproduced copy of a fuel tax license issued by the Kentucky Transportation Cabinet or an IFTA license issued by another jurisdiction shall be carried in each qualified motor vehicle when operating on any public highway of Kentucky.

(b) An IFTA license issued by Kentucky authorizes a qualified

motor vehicle for motor fuel tax purposes to be operated in any IFTA jurisdiction.

(5)(a) The Transportation Cabinet shall issue two (2) decals per qualified motor vehicle to a holder of a fuel tax license.

(b)1. Unless the qualified motor vehicle is being operated on a trip permit pursuant to KRS 138.665 and Section 10 of this administrative regulation, a fuel tax decal issued by the Transportation Cabinet or a decal issued by another IFTA jurisdiction denoting proof of issuance of an IFTA license shall be displayed on the lower rear exterior portion of both sides of the cab of each qualified motor vehicle.

2. The decal shall be located so as to be totally visible and the view of the decal shall not be obstructed by any part of the truck.

(c) A decal shall not be transferred between qualified motor vehicles.

(d) A new decal shall be issued each calendar year.

(6) Each fuel tax licensee that[~~which~~] does not have a U.S. Department of Transportation motor carrier identification number or an Interstate Commerce Commission motor carrier identification number shall submit a Kentucky Trucking Application, Form TC 95-1, to apply for an interstate motor carrier identification number[~~apply for an intrastate motor carrier identification number on Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition~~].

(a)1. An incomplete or deficient Kentucky Trucking Application, TC Form 95-1 shall be returned to the applicant within thirty (30) days of submission to the cabinet.

2. The applicant shall correct any filing deficiencies and resubmit the form to the cabinet within thirty (30) days of receipt.

(b)[~~(a)~~] The intrastate motor carrier identification number assigned to a KIT licensee shall be displayed on each qualified motor vehicle operated by the KIT licensee [~~operates in the same manner~~] as required in[~~pursuant to~~] 49 C.F.R. Part 390.21, except the KIT identification number shall be preceded by the letters "USDOT" and followed by the letters "KY".

(c)[~~(b)~~] A fuel tax licensee shall display the name of the motor carrier on each of its qualified motor vehicle in accordance with the provisions of 49 C.F.R. part 390.21 [~~the name of and location of the motor carrier~~].

(7)(a) Each fuel tax licensee shall immediately report any change in the principal business address, legal status, or business name to the Transportation Cabinet.

(b) All motor carrier operations shall be conducted in the name in which the fuel tax license is issued or the duly assumed business name of the licensee[~~,~~] as it appears on the license.

(c) A licensee shall use the name utilized in the application for the license in all documents relating to its operation. Both this name and the fuel tax license number shall be used in correspondence with the Transportation Cabinet.

Section 4. KYU License. (1) A motor carrier subject to the tax imposed by KRS 138.660(3) shall apply for a KYU license prior to operating on the highways of Kentucky [~~a motor vehicle subject to the tax imposed by KRS 138.660(3)~~].

(2) An applicant[~~Application~~] for a[~~the~~] KYU license shall submit a Kentucky Trucking Application, TC Form 95-1[~~be on form TC 95-200, "Application for Kentucky Highway Use License" as revised June 1995~~].

(3)1. An incomplete or deficient Kentucky Trucking Application, TC Form 95-1 shall be returned to the applicant within thirty (30) days of submission to the cabinet.

2. The applicant shall correct any filing deficiencies and resubmit the form to the cabinet within thirty (30) days of receipt.

(4)(a)[~~(3)(a)~~] A KYU licensee shall assign a unique number to each individual motor vehicle subject to the tax in KRS 138.660(3).

(b) The unique vehicle identification number shall:

1. Be displayed on the front of the vehicle readily legible in daylight hours from a distance of 100 feet when the vehicle is not in motion;

2. Be in sharp contrast to the background of the vehicle; and

3. Not be placed higher than the bottom of the windshield or lower than the bottom of the front bumper.

(5)[~~(4)~~] A KYU licensee shall [~~either:~~

~~(a) File a form TC 95-9, "Request for Validation of Motor Carrier Control Number", June 1996 edition with the Transportation Cabinet; or~~

~~(b)~~] display the KYU number on each motor vehicle subject to the tax imposed by KRS 138.660(3) and operated[~~it operates~~] in the same manner as required by[~~pursuant~~] to 49 C.F.R. Part 390.21.

(6)[~~(5)~~](a) A KYU licensee shall immediately report any change in the principal business address, legal status, or business name to the Transportation Cabinet.

(b) All motor carrier operations subject to KRS 138.660(3) shall be conducted in the name in which the KYU license is issued or the duly assumed business name of the licensee[~~,~~] as it appears on the license.

(c) A KYU licensee shall use the name utilized in the application for the license in all documents relating to its operations. Both this name and the KYU license number shall be used in correspondence with the Transportation Cabinet.

(7)(a)1.[~~(6)(a)~~] A KYU licensee shall register each [~~of its~~] vehicles subject to the tax imposed by KRS 138.660(3) with the Transportation Cabinet.

2. The registration may[~~shall~~] be reported on Vehicle Additions or Deletions Subject to KYU Tax, TC Form 95-38, or may be reported electronically at http://transportation.ky.gov/dmc/[~~form TC 95-38, "Application for the Registration of Taxable Vehicles in Kentucky", June 1996 edition~~].

(b) If the licensee sells, leases, or buys a vehicle subject to the tax imposed by KRS 138.660(3), the KYU licensee shall immediately file Vehicle Additions or Deletions Subject to KYU Tax, TC Form[~~a copy of the Form TC~~] 95-38, with the Transportation Cabinet showing the addition to or deletion from its fleet.

Section 5. Leasing of Motor Vehicles. The following shall apply to a[~~in the case of~~] lessor, lessee, independent contractors, and household goods agents:

(1)(a) A lessor that is regularly engaged in the business of leasing or renting a motor vehicle without driver to a licensee or other lessee may be deemed to be the licensee.

(b) The lessor shall be issued a license if an application has been:

1.[~~(a)~~] Properly filed; and

2.[~~(b)~~] Approved pursuant to the provisions of Sections 3 and 4 of this administrative regulation.

(2) If a motor carrier uses[~~used~~] independent contractors under leases of thirty (30) days or more, the lessor and lessee shall have the option of designating which party is to report and pay the fuel use tax imposed by KRS 138.660(1) and (2) and the fuel taxes imposed by other jurisdictions.

(3) If the lessee assumes responsibility for reporting and paying motor fuel taxes pursuant to subsection (2) of this section, the base jurisdiction for IFTA purposes shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor.

(4) If a motor carrier rents[~~rented~~] a motor vehicle for a period of less than thirty (30) days from a lessor described in subsection (1) of this section, the lessor shall pay the fuel use taxes unless the lessor has[~~both of the following conditions are met~~]:

(a) [~~The lessor has~~] A written rental contract that[~~which~~] designates the lessee as the party responsible for reporting and paying the fuel use tax; and

(b) [~~The lessor has~~] A copy of the lessee's IFTA fuel tax license that[~~which~~] is valid for the term of the rental.

(5) If the motor carrier uses independent contractors under leases of thirty (30) days of less, the trip lessor shall report and pay all fuel taxes.

(6) If the motor carrier is a household goods carrier using independent contractors, agents, or service representatives, under intermittent leases, the party liable for all motor fuel taxes shall be:

(a) The lessee if the qualified motor vehicle is being operated under the lessee's jurisdictional operating authority. The base jurisdiction for purposes of IFTA shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor or lessee; or

(b) The lessor who is the independent contractor, agent, or service representative if the qualified motor vehicle is being operated under the lessor's jurisdictional operating authority. The base jurisdiction for purpose of IFTA shall be the base jurisdiction of the lessor, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes.

(7) The lease shall be made available by either the lessee or the lessor upon request of the Transportation Cabinet.

Section 6. Bonding Requirements. (1) The Transportation Cabinet shall require the bond for a[~~the~~] payment of the taxes imposed by KRS 138.660 if the licensee meets one (1) of the following criteria:

(a) The licensee has failed to timely file a report required by Section 7 of this administrative regulation for three (3) quarters of sixteen (16) consecutive quarters;

(b) The licensee has failed to remit all of the tax due for a taxable quarter;

(c) An audit of the licensee indicates a recordkeeping or other administrative problem; or

(d) The licensee has had a[~~his~~] KYU, KIT, or IFTA license revoked, suspended, or canceled.

(2) A licensee required to post a bond pursuant to this section shall[~~may~~] deposit with the Transportation Cabinet one (1) of the following:

(a) A surety bond;

(b) Bonds or other obligations of the United States, Canada, or the Commonwealth of Kentucky made payable to the Commonwealth of Kentucky;

(c) Automatically renewable time certificates of deposit issued by a bank doing business in the Commonwealth of Kentucky and insured by the Federal Deposit Insurance Corporation, made in the name of licensee, payable to the Commonwealth of Kentucky and containing the provision that interest earned shall be payable to the licensee, but that the certificates can only be canceled by written authorization from the Transportation Cabinet; or

(d)[~~Investment certificates or share accounts issued by a savings and loan association doing business in the Commonwealth of Kentucky and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, shall be delivered to the Transportation Cabinet with a properly executed assignment form whereby the funds on deposit are assigned and made payable to the Commonwealth of Kentucky; or~~

~~(e)~~] A cash bond submitted in the form of a cashier's check, money order, or other certified funds that[~~which~~] are payable to the Commonwealth of Kentucky.

(3) The licensee shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee.

(4)(a) A licensee shall file proof of the bond required pursuant to subsection (1) of this section, by submitting[~~may be filed on~~] form TC 95-201[~~, "Kentucky Highway Use Bond", June 1998 edition~~].

Section 7. Tax Payment and Reporting. (1) The Transportation Cabinet shall by the last day of each quarterly reporting period mail the appropriate tax report form to each fuel tax licensee.

(a) A Kentucky-based IFTA licensee[~~Kentucky-based IFTA licensees~~] shall be mailed [~~form "~~]IFTA Quarterly Fuel Tax Report["] IFTA 100[~~, November 1994 edition~~].

(b) A KIT licensee[~~KIT licensees~~] shall be mailed the[~~form "~~]Highway Quarterly Tax Return["], TC Form 95-103[~~Form TC 95-101a, January 1996 edition~~].

(c) Except as provided in subsection (3) of this section, each licensee shall comply with KRS 138.685.

1. For purposes of determining whether the deadline for filing established in KRS 138.685(1) has been met, the cabinet shall consider a filing received on the Monday following a Saturday or Sunday on which date the deadline occurs as in compliance with this deadline.

2. The cabinet shall consider a filing received on the next business day following a holiday on which the deadline occurs as in compliance with this deadline.

(d) A fuel tax licensee or a KYU tax licensee with[~~Even if a fuel tax licensee had~~] no operations during the reporting quarter[~~, the licensee~~] shall file a[~~the~~] tax reporting form.

(3)[~~(2)~~](a) The Transportation Cabinet shall provide or make available[~~send at the beginning of each calendar year~~] to each KYU licensee[~~all of~~] the KRS 138.660(3) quarterly tax report forms, including[~~"~~]Kentucky Weight Distance Tax Form["], TC Form[~~Form TC~~] 95-101[~~, May 1996 edition due for that calendar year~~].

(b) A KYU licensee shall comply with the provisions of KRS 138.685.

(4)(a) If[~~(3)(a) When~~] filing a motor fuel tax report, an IFTA licensee shall apply the overpayment generated in one (1) jurisdiction to the motor fuel taxes owed to another jurisdiction, remitting the net amount owed to the Transportation Cabinet.

(b) IFTA licensees[~~licenses~~] shall present one (1) check to the Transportation Cabinet to pay the motor fuel taxes due pursuant to KRS 138.660(1) and (2) as well as the motor fuel taxes due all other IFTA jurisdictions.

(c) If a fuel tax licensee has been required to file a bond pursuant to Section 6 of this administrative regulation, the check to pay the motor fuel taxes due shall be certified.

(d) The requirement for a certified check for KYU licensees shall be waived pursuant to KRS 138.665 unless the motor carrier is notified by the Transportation Cabinet to the contrary. The cabinet may require a certified check from a motor carrier if the motor carrier:

1. Is required to post a bond for its fuel taxes pursuant to Section 6 of this administrative regulation [~~is required to post a bond for its fuel taxes~~];

2. Has not established a record of consistent and continued compliance with KRS 138.655 through 138.7291; or

3. Is operating on the highways of Kentucky without a KYU license.

(5)[~~(4)~~] A computer-generated tax return shall not be used in place[~~lieu~~] of Transportation Cabinet forms unless the licensee receives advance written approval of the format from the [~~Transportation Cabinet,~~] Division of Motor Carriers, Tax Branch. The format submitted for approval shall provide the same information as the Kentucky Weight Distance Tax Form, TC Form 95-101 and be substantially the same format.

Section 8. Tax Recordkeeping. Each fuel tax licensee or KYU licensee shall maintain records as established[~~set forth~~] in 601 KAR 1:201.

Section 9. Assessment. (1)(a) If a fuel tax licensee fails, neglects, or refuses to file a tax report when due, the Transportation Cabinet shall, on the basis of the best information available to the cabinet, determine the fuel tax liability of the licensee for each jurisdiction and the tax liability of the license as established in KRS 138.660(3).

(b)[~~If a KYU licensee fails, neglects, or refuses to file a tax report when due, the Transportation Cabinet shall, on the basis of the best information available to the cabinet, determine the tax liability of the licensee relating to KRS 138.660(3).~~

~~(c)~~] If a motor carrier fails, neglects, or refuses to obtain either a fuel tax license or a KYU license, the Transportation Cabinet shall[~~may~~], on the basis of the best information available to the cabinet, determine the KRS 138.660(1) and (2) or (3) tax liability of the motor carrier for Kentucky.

(2)(a) The motor carrier shall be notified of additional tax assessments by mail.

(b) In the absence of protest, payment[~~,~~] including interest from the original due date[~~, in the absence of protest,~~] shall be made within forty-five (45) days from the date of the notice of tax due.

(3)(a) A written protest may be filed by the motor carrier[~~,~~] or other persons representing the motor carrier[~~,~~] and shall include a supporting statement and documents that[~~which~~] identify the specific adjustments requested or the portions of the assessment being protested and setting forth the reasons the protest is being made (KRS 131.110(1)).

(b) The protest shall be submitted to, or presented at[~~filed with~~] the Transportation Cabinet Building, Division of Road Fund Audits, 4th floor, 200 Mero Street, Frankfort, Kentucky 40622[~~Audit Review~~] within forty-five (45) days from the date of the notice of tax

due.

(4) If an IFTA license motor carrier elects to exercise the right under Section 1450.200 of the IFTA Articles of Agreement for Further Requests for Appeal, the cabinet shall consider this a protest of the assessment by the taxpayer[,] and place the taxpayer into protest status.

(5) If an IFTA member jurisdiction elects to exercise the right under Section 1360.100 of the IFTA Articles of Agreement to reaudit the motor carrier, the cabinet shall consider this a protest of the assessment by the taxpayer.

(6) If the supporting statements and documentation are not sufficient to change the assessment results, the motor carrier may request an information gathering or protest conference with the Division of Road Fund Audits[~~Audit Review~~].

(7)(a) Within sixty (60) days of the taxpayer submitting complete additional information or within sixty (60) days of a protest conference being held[~~a reasonable period after the information gathering or protest conference is held~~], the Division of Road Fund Audits[~~cabinet~~] shall issue a final ruling to the taxpayer that includes the final assessment and the procedures to follow if the taxpayer chooses to appeal to the Kentucky Board of Tax Appeals, [~~stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals (~~]KRS 131.110[~~)~~].

(b) Upon agreement by both parties, the sixty (60) day time period may be altered by an agreed waiver that specifies the new time period for completion.

(8) If the motor carrier does not request a conference, the cabinet shall issue a final ruling to the taxpayer[,] stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals [~~(KRS 131.110)~~].

(9) Within thirty (30) days from the date of the final ruling [~~by the cabinet~~], a written protest may be filed with the Kentucky Board of Tax Appeals by the taxpayer[,] or other persons representing the taxpayer as established in KRS 131.110[~~, with the Kentucky Board of Tax Appeals (KRS 131.110)~~].

Section 10. Trip Permits. (1) A motor carrier who does not have a required license may operate on Kentucky's highways using[~~pursuant to~~] a temporary trip permit issued pursuant to KRS 138.665.

(2) Application for a temporary trip permit shall be made by applying to the Division of Motor Carriers. The application may be made in person, in writing, or by telephone or facsimile communication.

(a) The address for written requests is P.O. Box 2007, Frankfort, Kentucky 40602;

(b) The location for in person requests is Transportation Cabinet Building, Division of Motor Carriers, 2nd floor, 200 Mero Street[~~Third Floor, State Office Building, 501 High Street~~], Frankfort, Kentucky 40622;

(c) The telephone number of the Division of Motor Carriers is (502) 564-4540;

(d) The telephone number for the facsimile machine in the Division of Motor Carriers is (502) 564-4138.

(3) The application for a temporary trip permit shall contain the following information:

(a) The name and address of the applicant;

(b) The year, make, and serial[~~(vehicle identification)~~] number or vehicle identification number of the motor vehicle for which the application is being made; and

(c) The combined gross weight of the motor vehicle.

Section 11. Fuel Tax Refunds or Credits. (1) A fuel tax licensee shall be allowed to carry forward a motor fuel tax credit for eight (8) quarters.

(2) A refund request from a fuel tax licensee shall be presented in writing and detail the reason for the requested refund.

(3)(a) A full credit shall be allowed IFTA and KIT licensees for tax-paid fuel purchases placed in a qualified motor vehicle.

(b) Any excess of fuel tax paid over tax liability in any member jurisdiction shall be credited in full to tax liability in other member jurisdictions or to the IFTA licensee's account ledger[~~, as appropriate~~].

(4)(a) A motor fuel tax refund to an IFTA licensee shall not be made unless the motor fuel tax liability, including an audit assessment, has been satisfied for all member jurisdictions.

(b) If a fuel tax licensee's refund request is determined to be properly due, the refund shall be paid within ninety (90) days after receipt of a request for payment from a fuel tax licensee.

(5)(a) A fuel tax licensee may apply within two (2) quarters to the Transportation Cabinet for refund of the fuel tax imposed by KRS 138.660(1) or (2) if the fuel:

1. Is[~~Was~~] consumed on the public highways;

2. Is[~~Was~~] from the same tank that is[~~was~~] permanently attached to the power unit of the qualified motor vehicle;

3. Serves[~~Served~~] to power the operation of the qualified motor vehicle on the highways; and

4. Is[~~Was~~] used for:

a. A mixer;

b. Pumps;

c. A load lift;

d. A refrigeration unit; or

e. Similar power take-off equipment.

(b) The application for the refund of fuel defined in paragraph (a) of this subsection shall be made on form [~~TC 95-214, "~~]Fuel Tax Refund for Power Takeoff["], Form TC 95-214[~~June 1996 edition~~] to substantiate the nonhighway use of the fuel.

Section 12. Tax Penalties and Interest. (1) The penalty for the late payment of the motor fuel tax imposed by KRS 138.660(3) shall be as established[~~set forth~~] in KRS 138.715.

(2)[~~The penalty for the late payment of motor fuel tax imposed by KRS 138.660(1) and (2) or an IFTA jurisdiction shall be ten (10) percent of the tax due or fifty (50) dollars whichever is greater.~~

~~(3)~~] The interest on the late payment of any of the taxes administered pursuant to this administrative regulation shall be as established[~~set forth~~] in KRS 138.715.

(3)[~~(4)~~] The taxes, penalties, and interest identified in KRS 138.675 shall also include the motor fuel taxes, penalties, and interest owed to other IFTA jurisdictions.

(4)[~~(5)~~] The penalties and interest due for the overpayment of a refund shall begin to accrue[~~accruing~~] fifteen (15) days after the motor carrier is notified of the overpayment.

Section 13. License Cancellation, Refusal, and Reinstatement. (1) If a motor carrier fails to comply with the provisions of KRS 138.655 through 138.7291[,] or this administrative regulation, the fuel tax license or KYU license shall[~~may~~] be canceled in accordance with the provisions of KRS 138.675.

(2) A license shall not be issued and shall be cancelled for the following reasons:

(a) Improper use of license or decal;

(b) Failure to file a tax return when due;

(c) Failure to pay all of the taxes owed;

(d) Failure to produce records after written request for the records;

(e) Failure to maintain records in the required manner;

(f) Notification from another IFTA jurisdiction of motor fuel tax violations in that jurisdiction; or

(g) A similar action or inaction by the licensee; or

(h) If a motor carrier has applied for new authority for the purpose of avoiding its former authority's tax liability.

(3) A motor carrier shall be notified of the pending license cancellation or license refusal and offered the opportunity for an administrative hearing pursuant to Section 14 of this administrative regulation.

(4) If a license is canceled by the Transportation Cabinet, the motor carrier shall immediately return the license.

(5) If a motor carrier desires to have a canceled license reinstated, the carrier shall [~~meet the following criteria~~]:

(a) Prove to the Transportation Cabinet that sufficient records are being and shall[~~will~~] be maintained to file accurate tax reports;

(b) Submit quarterly tax reports for all missed reporting periods;

(c) Pay all taxes, penalties, and interest owed;

(d) Provide a bond pursuant to Section 6 of this administrative regulation; and

(e) Provide evidence of liability insurance, operating authority, and other items of KRS Chapter 281 applicable to the motor carrier.

Section 14. Appeal Procedure. (1) An appeal of a[~~any~~] nontax action by[~~of~~] the Transportation Cabinet related[~~resulting from its actions relating~~] to KRS 138.655 through 138.7295 shall be in writing and directed to the Transportation Cabinet Building, Office of Legal Services, 6th floor, 200 Mero Street[~~General Counsel, 10th Floor, State Office Building, 501 High Street~~], Frankfort, Kentucky 40622.

(2) An administrative hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "International Fuel Tax Agreement Audit Manual", January 2007 edition,[~~(July 1998 edition),~~] International Fuel Tax Association;

(b) "Vehicle Additions or Deletions Subject to KYU Tax", TC Form 95-38, December 2009;

(c)[~~Form TC 95-9, "Request for Validation of Motor Carrier Control Number," (August 1996 edition), Transportation Cabinet;~~

~~(c) Form TC 95-38, "Application for the Registration of Taxable Vehicles in Kentucky", (October 1996 edition), Transportation Cabinet;~~

~~(d) Form TC 95-201,~~] "Kentucky Highway Use Bond", TC Form 95-201, April 2010;

(d)[~~(June 1995 edition), Transportation Cabinet;~~

~~(e) Form TC 95-1,~~] "Kentucky Trucking Application", TC Form 95-1, April 2010;

(e)[~~(October 1998 edition), Transportation Cabinet;~~

~~(f) Form TC 95-205, "Kentucky Fuel Users Bond", (June 1996 edition), Transportation Cabinet;~~

~~(g) Form~~] "IFTA Quarterly Fuel Tax Return[~~Report~~]" IFTA-100-MN, August 1998;

(f)[~~, (August 1998 edition), Transportation Cabinet;~~

~~(h) Form TC 95-101a, "Highway Quarterly Tax Return", (September 1996 edition), Transportation Cabinet;~~

~~(i) Form TC 95-101,~~] "Kentucky Weight Distance Tax Form", TC Form 95-101, March 2010;

(g)[~~(May 1996 edition), Transportation Cabinet; and~~

~~(j) Form TC 95-214,~~] "Fuel Tax Refund for Power Takeoff", TC Form 95-214, April 2010;

(h) "Highway Quarterly Tax Return", TC Form 95-103, December 2007;

(i) "International Fuel Tax Agreement Procedures Manual", January 2008 edition, International Fuel Tax Agreement;

(j) "International Fuel Tax Agreement Articles of Agreement", revised January 2010, International Fuel Tax Agreement; and

(k) "IFTA Quarterly Fuel Use Tax Schedule", IFTA-101, August 1998.[~~(June 1996 edition), Transportation Cabinet.~~]

(2) This material may be inspected, copied, or obtained at the Transportation Cabinet Building, 200 Mero Street[~~, State Office Building, 501 High Street~~], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS O. ZAWACKI, Commissioner
MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: April 13, 2010

FILED WITH LRC: April 13, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2010 at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann Dangelo, Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann Dangelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes administrative procedures for the implementation of the International Fuel Tax Agreement (IFTA) in Kentucky, sets out the differences between the requirements of IFTA and Kentucky law, establishes when the provisions of IFTA preempt state law, and provides for uniformity in the interstate and intrastate administration of KRS 138.660(1) and (2) so as not to violate the Interstate Commerce Clause.

(b) The necessity of this administrative regulation: This administrative regulation was originally promulgated in conjunction with the implementation of IFTA in Kentucky. 49 U.S.C. 31705 required that each state conform with the provisions of the International Fuel Tax Agreement by September 30, 1996.

(c) How this administrative regulation conforms to the content of the authorizing statues: This regulation establishes administrative procedures for interstate and intrastate motor carriers operating in Kentucky that are subject to a motor fuel tax.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation provides the most current, detailed information for interstate and intrastate motor vehicle carriers.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation updates and clarifies procedures. It also removes obsolete forms and replaces them with the current forms.

(b) The necessity of the amendment to this administrative regulation: This amended regulation is necessary to update information, language, procedures, and forms used by motor carriers in the IFTA process. This amendment also amends current language to more clearly define when a licensee has met the deadline for filing quarterly tax returns in accordance with KRS 138.685(1).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates forms and procedures required under the authorizing statutes that have become outdated since the administrative regulation was originally promulgated.

(d) How the amendment will assist in the effective administration of the statutes: Motor carriers who are subject to the regulation will have the most current forms and information available.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation effects approximately 60,000 motor carriers who operate trucks on the public highways of 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: Regulated entities will not have to take any additional actions as a result of these amendments.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): Parties required to comply with

this administrative regulation will have the latest information and forms.

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

(a) Initially: No costs are associated with these amendments.

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? Yes. There are different requirements for motor vehicle carriers subject to the weight distance tax, (KRS 138.660(3).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Transportation Cabinet's Division of Motor Carriers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 138.725(1), 281.600, 49 U.S.C.317.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures and revenues should not be affected.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs are anticipated.

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

Revenues (+-):

Expenditures (+-):

Other Explanation:

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

702 KAR 3:246. School council allocation formula: KETS District Administrative System Chart of Accounts.

RELATES TO: KRS 160.345(8)

STATUTORY AUTHORITY: KRS 156.070(4), 160.345(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.345(8) requires that the Kentucky Board of Education adopt a formula by administrative regulation which establishes a formula by which school district funds shall be allocated to each school council. This administrative regulation establishes the school council allocation formula for use by local school districts utilizing the Kentucky Education Technology System (KETS) District Administrative System Chart of Accounts per 702 KAR 3:120.

Section 1. Definitions. (1) "Categorical programs" means programs under which funding and uses for the funding are specifically set by the funding authority and are not in the general fund.

(2) "District average teacher's salary" means the total of all teacher salaries for 185 days or the number of contract days as otherwise required by the Kentucky General Assembly within a biennial budget in noncategorical programs in the district divided by the number of teachers in the noncategorical programs in the district.

Section 2. The local school district shall provide notice to school councils of a tentative[~~an~~] allocation by March 1 and notice of an updated allocation by May 1 of each year for the funds and positions identified in Sections 4, 5, 6, and 8 of this administrative regulation for the next budget year [~~by March 1 of each year~~] in accordance with this administrative regulation. The local school district shall provide to school councils an allocation pursuant to Section 7 of this administrative regulation for the next budget year by May 30 of each year in accordance with this administrative regulation.

Section 3. The local school district shall calculate the funds available for distribution to school councils using only the general fund and by excluding the following proposed district-wide expenditures from the general fund proposed budget for the year being allocated:

(1) Function 1XXX, Function 1200, Home and hospital.

(2) Function 1XXX, Function 1700, Expelled or suspended.

(3) Function 1XXX, Function 1900, Other instructional programs.

(4)[(~~3~~)] Function 2110-2190[~~2100~~], Student support services, except for school-based employees and specified supplies.

(5)[(~~4~~)] Function 221X,[~~2210, Instructional staff support services~~], improvement of instruction[~~, central office staff and supplies only~~].

(6)[(~~5~~)] Function 23XX[~~2300~~], District administrative[~~administration~~] support services.

(7)[(~~6~~)] Function 25XX[~~2500~~], Business support services.

(8)[(~~7~~)] Function 26XX[~~2600~~], Plant operation and maintenance[~~, except for school-based employees~~].

(9)[(~~8~~)] Function 27XX[~~2700~~], Student transportation.[~~(9) Function 2800, Central Office support services.~~]

(10) Function 3XXX[~~3000~~], Noninstructional services.

(11) Function 4XXX[~~4000~~], Facilities acquisition and construction services.

(12) Function 5XXX[~~5000~~], Other.

(13) All expenditures for extra duty and extended employment, exceptional children services, itinerant teachers, and fringe benefits in all codes.

Section 4. Allocation for Certified Staff. (1) A board staffing policy or guidelines shall be established to determine the number of allocated positions for each school. To determine the allocation to school councils for certified staff, the district shall provide sufficient funds:

(a) To meet class size caps and pupil contact hours established in KRS 157.360 based on the projected full-time equivalent enrollment for the upcoming school year; and

(b) To meet other classroom teaching and certified staff positions not included in paragraph (a) of this subsection that are generated by the local board certified staffing policy.

(2) Any revisions of staffing policy or guidelines for the next school year shall be adopted by the local board and submitted to the Kentucky Department of Education[~~Division of Instructional Leadership Development~~] by May 1[~~March 1~~] of each year.

(3) Funds for positions allocated in subsection (1) of this section shall be based on the previous year's actual 185 day salary or the number of contract days as otherwise required by the Kentucky General Assembly within a biennial budget adjusted by changes in rank, additional year of experience, and changes in the district's salary schedule for each existing staff member.

(4) Funds for new and vacant certified staff positions shall be based on a minimum of ninety-five (95) percent of the district's average 185 day certified salary or the number of days as other-

wise directed by the Kentucky General Assembly adjusted for changes in the district's salary schedule for noncategorical staff paid in the previous year.

(5) If the actual salary of new certified personnel is less than ninety-five (95) percent of the certified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(6) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. A council shall be notified of an adjustment if the adjustment represents a change in staffing due to enrollment increases or decreases.

Section 5. Allocation for Classified Staff. (1) A board staffing policy or guidelines for the next school year shall be adopted by the local board and established to determine the number of allocated positions for each school. Any revisions of staffing policy or guidelines shall be submitted to the Kentucky Department of Education[~~Division of Instructional Leadership Development~~] by May[~~March~~] 1 of each year.

(2) Funds shall be provided for all school-based classified positions in noncategorical programs generated by the local board classified staffing policy using the previous year's salary adjusted for any district-wide increase.

(3) Funds for new or vacant positions shall be based on ninety-five (95) percent of the district's average classified salary for that personnel job class for noncategorical staff adjusted for any district-wide increase.

(4) If the actual salary of new classified personnel is less than ninety-five (95) percent of the classified district average salary for the personnel job class, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(5) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. A council shall be notified of an adjustment if the adjustment represents a change in staffing due to enrollment increases or decreases.

Section 6. Other Minimum Allocations. (1) School councils shall receive a minimum allocation of three and one-half (3 1/2) percent of the statewide guaranteed base funding level for Support Education Excellence in Kentucky (SEEK) based on prior year final average daily attendance.

(2) The amount generated in subsection (1) of this section shall be adjusted at the end of the second school month for changes in average daily attendance and projected funding for SEEK.

(3) Allocations for operating expenses, including utilities, or for health and safety requirements of schools shall not be included in the allocations required by Sections 4, 5, 7, or 8 of this administrative regulation or this section. If funds are given to a school for these purposes, the funds shall be distributed in a separate allocation.

Section 7. Distribution of the Balance. (1) The balance between the amount generated in Sections 4, 5, and 6 of this administrative regulation and the amount available for distribution to school councils from Section 3 of this administrative regulation shall be distributed by the local board in one (1) of the following manners:

(a) An amount per prior year final average daily attendance;

(b) Based on pupil needs identified by school councils in their adopted school improvement plans and designated by the local school board. Money provided under this subsection shall be used only for the needs identified by the council from its adopted school improvement plan and designated by the board;

(c) For specific instructional purposes based on student needs identified by the board from disaggregated student achievement data. Money provided under this paragraph shall be used by the council to address only the identified needs; or

(d) A combination of paragraphs (a), (b), and (c) of this subsection.

(2) An adjustment may be made to allocations under subsection (1) of this section at the end of the second school month for changes in average daily attendance and projected funding for SEEK, and changes in the projections for prior year, end-of-year balances.

(3) If the allocations in Sections 4, 5, and 6 of this administrative regulation generate more funds than are available in Section 3 of this administrative regulation for distribution to school councils, the local board shall make every reasonable effort to make up the deficit.

Section 8. A tentative amount for professional development shall be allocated within thirty (30) days of notification from the Kentucky Department of Education, pursuant to KRS 160.345(8). The amount allocated shall be equal to at least the minimum requirement multiplied by the average daily attendance from the prior school year. The amount of professional development allocation shall be amended by September 15 to reflect the most recent annual average daily attendance.

Section 9. Each year school councils shall review the budgets for all categorical programs and provide comments to the local board prior to the adoption of the budgets.

Section 10. A school council allocation by the district shall not result in a proposed expenditure that would cause the district budget to hold in reserve less than the required amount set by KRS 160.470.

Section 11. The provisions of this administrative regulation notwithstanding, a district shall not be prohibited from passing on to school councils any reduction in state and local revenues.

Section 12. The Kentucky Board of Education may approve requests from local school districts annually to use an alternative formula to allocate funds to schools. A local school district requesting approval to use an alternative process shall submit written documentation that the formula would generate funding equal to or greater than the amount provided to school councils under Section 3 of the administrative regulation. All requests shall be received by the Division of School Finance by October 1 preceding the allocation year. Any alternative process approved by the Kentucky Board of Education shall be subject to subsequent review.

Section 13. Under Sections 4 and 5 of this administrative regulation, the funds allocated for staff positions shall be exactly the amounts permitted by the board policies or guidelines required in those sections.

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

APPROVED BY AGENCY: April 15, 2010

FILED WITH LRC: April 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 26, 2010 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five 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 June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the processes to be followed to provide the annual school council allocation as required by KRS 160.345.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of 160.345 to provide the process by which school districts allocate funds to school councils. The March 1 allocation date in the regulation was waived by the Kentucky Board of Education in 2009 and extended to May 1 due to changes in the state's allocation process and timeline to allow local district flexibility. The proposed amendment makes that change permanent.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for establishing required school board policy and procedures to implement KRS 160.345.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides specifics for establishing required school board policy and procedures to implement KRS 160.345, therefore ensuring timely and accurate school council allocations.

(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 allows a projected allocation to councils on March 1 with a final allocation on May 1. Previously, the final allocation was required on March 1.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow local flexibility with district-wide budgeting.

(c) How the amendment conforms to the content of the authorizing statute: The amendment meets the requirements of KRS 160.345 by providing a timeline for the allocation of funds to school councils.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides specifics for establishing required school board policy and procedures to implement KRS 160.345 therefore ensuring timely and accurate school council allocations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky that have schools with SBDM councils and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed regulation will impact identified schools and districts by providing the detail necessary to carry out their roles and responsibilities in KRS 160.345.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School boards must approve a policy to be implemented by the superintendent. Kentucky Department of Education staff will be responsible for monitoring the allocations to school councils per the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the school districts or the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Schools will have an improved chance of providing an environment to enhance student achievement through efficient and effective budgeting processes. The Kentucky Department of Education staff will be able to make recommendations to the school districts regarding the best policies and practices for school council allocations.

(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 cost.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.345

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional costs are expected.

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

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

(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:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Libraries and Archives
Public Records Division
(Amendment)

725 KAR 1:061. Records retention schedules; authorized schedules.

RELATES TO: KRS 171.420(3), 171.450

STATUTORY AUTHORITY: KRS 171.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.420(3) provides that the State Archives and Records Commission shall be the final authority for the disposition of all public records in Kentucky. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to promulgate administrative regulations to enforce the provision of KRS 171.410 to 171.740[~~by promulgating administrative regulations~~]. This administrative regulation identifies records retention and disposition schedules approved by the commission that[~~of public records approved and authorized for use by~~] state and local agencies shall follow for retention and disposition of public records.

Section 1. Schedules. (1) A Kentucky state government agency shall comply with:

(a) The General Schedule for State Agencies;

(b) The General Schedule for Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Department of Agriculture Schedule;
2. Auditor of Public Accounts Schedule;
3. Economic Development Cabinet Schedule;
4. Education and Workforce Development Cabinet Schedule;
5. Energy and the Environment Cabinet Schedule;
6. Finance and Administration Cabinet Schedule;
7. General Government Schedule;
8. Office of the Governor Schedule;
9. Cabinet for Health and Family Services Schedule;
10. Justice and Public Safety Cabinet Schedule;
11. Department of Law Schedule;
12. Labor Cabinet Schedule;
13. Legislative Branch Schedule;
14. Personnel Cabinet Schedule;
15. Public Protection Cabinet Schedule;
16. Office of the Secretary of State Schedule;
17. Tourism, Arts and Heritage Cabinet;
18. Transportation Cabinet Schedule; or
19. Department of the Treasury Schedule.[~~Department of Agriculture Schedule:~~
~~2. Auditor of Public Accounts Schedule;~~
~~3. Commerce Cabinet Schedule;~~
~~4. Economic Development Schedule;~~
~~5. Education Cabinet Schedule;~~
~~6. Environmental and Public Protection Cabinet Schedule;~~
~~7. Finance and Administration Cabinet Schedule;~~
~~8. General Government Schedule;~~
~~9. Office of the Governor Schedule;~~
~~10. Cabinet for Health and Family Services Schedule;~~
~~11. Justice and Public Safety Cabinet Schedule;~~
~~12. Department of Law Schedule;~~
~~13. Legislative Branch Schedule;~~
~~14. Office of the Lieutenant Governor Schedule;~~
~~15. Personnel Cabinet Schedule;~~
~~16. Office of the Secretary of State Schedule;~~
~~17. Transportation Cabinet Schedule; or~~
~~18. Department of the Treasury Schedule.~~]

(2) State universities and the Kentucky Community and Technical College System shall comply with the State University Model Schedule.

(3) Kentucky local government agencies shall comply with:

(a) The Local Government General Records Schedule;

(b) The General Schedule for Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Area Development District Schedule;
2. County Attorney Schedule;
3. County Clerk Schedule;
4. County Coroner Schedule;
5. County Judge Executive Schedule;
6. County Sheriff Schedule;
7. County Treasurer Schedule;
8. Jailer Schedule;
9. Lexington Fayette Urban County Government Schedule;
10. Library District Schedule;
11. Local Health Department Schedule;
12. Louisville Metro Government Schedule;
13. Municipal Government Schedule; or
14.[~~13.~~] Public School District (K-12/Central Office) Schedule.

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

(a) "General Schedule for State Agencies", 2009;

(b) "General Schedule for Electronic and Related Records Schedule", 2009;

(c) "Department of Agriculture Schedule", 2009;

(d) "Auditor of Public Accounts Schedule", 2009;

(e) "Commerce Cabinet Schedule", 2009;

(f) "Economic Development Cabinet Schedule", 2009;

(g) "Education and Workforce Development Cabinet Schedule", 2009;

(h) "Energy and Environment Cabinet Schedule", September 2009;

(i) "Finance and Administration Cabinet Schedule", 2009;

(j) "General Government Schedule", September 2009;

(k) "Office of the Governor Schedule", 2009;

(l) "Cabinet for Health and Family Services Schedule", September 2009;

(m) "Justice and Public Safety Cabinet Schedule", 2009;

(n) "Labor Cabinet Schedule", 2009;

(o) "Department of Law Schedule", 2009;

(p) "Legislative Branch Schedule", 2009;

(q) "Office of the Lieutenant Governor Schedule", 2009;

(r) "Personnel Cabinet Schedule", 2009;

(s) "Office of the Secretary of State Schedule", 2009;

(t) "Transportation Cabinet Schedule", 2009;

(u) "Tourism, Arts and Heritage Cabinet Schedule", 2009;

(v) "Department of the Treasury Schedule", 2009;

(w) "State University Model Schedule", September 2009;

(x) "Local Government General Records", 2009;

(y) "Area Development District Schedule", 2009;

(z) "County Attorney Schedule", 2009;

(aa) "County Clerk Schedule", 2009;

(bb) "County Coroner Schedule", 2009;

(cc) "County Judge Executive Schedule", 2009;

(dd) "County Sheriff Schedule", 2009;

(ee) "County Treasurer Schedule", 2009;

(ff) "Jailer Schedule", 2009;

(gg) "Lexington Fayette Urban County Government Schedule", 2009;

(hh) "Library District Schedule", 2009;

(ii) "Local Health Department Schedule", 2009;

(jj) "Louisville Metro Government Schedule", 2009;

(kk) "Municipal Government Schedule", 2009; and

(ll) "Public School District (K-12/Central Office) Schedule", 2009.["~~General Schedule for State Agencies", September 2007;~~
~~(b) "General Schedule for Electronic and Related Records Schedule", 2007;~~
~~(c) "Department of Agriculture Schedule", 2007;~~
~~(d) "Auditor of Public Accounts Schedule", 2007;~~
~~(e) "Commerce Cabinet Schedule", 2007;~~
~~(f) "Economic Development Cabinet Schedule", 2007;~~
~~(g) "Education Cabinet Schedule", 2007;~~
~~(h) "Environmental and Public Protection Cabinet Schedule", September 2007;~~
~~(i) "Finance and Administration Cabinet Schedule", 2007;~~
~~(j) "General Government Schedule", September 2007;~~
~~(k) "Office of the Governor Schedule", 2007;~~
~~(l) "Cabinet for Health and Family Services Schedule", September 2007;~~
~~(m) "Justice and Public Safety Cabinet Schedule", 2007;~~
~~(n) "Department of Law Schedule", 2007;~~
~~(o) "Legislative Branch Schedule", 2007;~~
~~(p) "Office of the Lieutenant Governor Schedule", 2007;~~
~~(q) "Personnel Cabinet Schedule", 2007;~~
~~(r) "Office of the Secretary of State Schedule", 2007;~~
~~(s) "Transportation Cabinet Schedule", 2007;~~
~~(t) "Department of the Treasury Schedule", 2007;~~
~~(u) "State University Model Schedule", September 2007;~~
~~(v) "Local Government General Records", 2007;~~
~~(w) "Area Development District Schedule", 2007;~~
~~(x) "County Attorney Schedule", 2007;~~
~~(y) "County Clerk Schedule", 2007;~~
~~(z) "County Coroner Schedule", 2007;~~
~~(aa) "County Judge Executive Schedule", 2007;~~
~~(bb) "County Sheriff Schedule", 2007;~~
~~(cc) "County Treasurer Schedule", 2007;~~
~~(dd) "Jailer Schedule", 2007;~~
~~(ee) "Lexington Fayette Urban County Government Schedule", 2007;~~
~~(ff) "Library District Schedule", 2007;~~
~~(gg) "Local Health Department Schedule", 2007;~~

~~(hh) "Municipal Government Schedule", 2007; and~~

~~(ii) "Public School District (K-12/Central Office) Schedule", 2007.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WANYE ONKST, Commissioner

APPROVED BY AGENCY: April 13, 2010

FILED WITH LRC: April 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2010 at 10 a.m. at the offices of the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Board Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than May 17, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Wayne Onkst, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. phone (502) 564-8300 ext. 312, fax (502) 564-5773.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Wayne Onkst, Commissioner

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies records retention schedules approved for use by public agencies.

(b) The necessity of this administrative regulation: KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to enforce the provision of KRS 171.410 to 171.740 by promulgating administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.450(1)(a) and (b) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal and for the disposal or destruction of public records authorized for disposal or destruction. This regulation identifies those schedules.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates the permanent retention, disposal or destruction of public records by identifying schedules public agency personnel shall use in meeting their responsibilities related to public records management. The retention and dispositions mandated by the State Archives and Records Commission are documented on approved records retention schedules.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates schedule dates, agency names, and retention decisions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation is current and up to date.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires that schedules be created for public agency records.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government agencies must follow this regulation, as all have a responsibility to dispose of records according to decisions of the State Archives and Records Commission, outlined in the records retention schedules.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added to those already existing for public agencies under this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies who comply with this regulation will recognize more effective and efficient business practices, will recognize cost savings from reduced records storage costs, and will document agency history more effectively.

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

(a) Initially: There will be no costs for agencies to implement this regulation. This regulation merely identifies schedules utilized in activities agencies are undertaking already.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies.

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

(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, directly or indirectly, any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

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 state and local government entities are required to use the documents enumerated in this regulation in order to be compliant with the public records law.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues. Continued good records management results in cost savings for government, and in more efficient operation of 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? There will be

no additional revenues generated because of this regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs generated because of this regulation.

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

Revenues (+/-): $0

Expenditures (+/-):$0

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(Amendment)

781 KAR 1:020. General provisions for operation of the Office of Vocational Rehabilitation.

RELATES TO: KRS 151B.190, 29 U.S.C. 722, 723

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.200 accepts and agrees to comply with federal vocational rehabilitation acts, provides for a state rehabilitation agency and sets eligibility criteria for vocational rehabilitation services. KRS 151B.195 requires the Executive Director, Office of Vocational Rehabilitation to promulgate administrative regulations governing services, personnel, and administration of the state rehabilitation agency. This administrative regulation establishes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for that purpose.

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment.

(2) "Eligible individual" means an individual with a disability who has been determined by an appropriate office staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

(3) "Legally blind" means an individual has a visual acuity of 20/200 or less in the better eye with correction or a visual field of twenty (20) degrees or less.

(4) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

(5) "Office" means the Office of Vocational Rehabilitation and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(6) "Relative" means an individual related to another individual by lineage, marriage, or adoption and includes a:

(a) Spouse;

(b) Parent;

(c) Grandparent;

(d) Brother;

(e) Sister;

(f) Son;

(g) Daughter;

(h) Grandchild;

(i) Aunt;

(j) Uncle;

(k) Niece;

(l) Nephew; and

(m) First cousin.

(7) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment to employment.

Section 2. Employees' Application for Services. (1) An employee who wishes to apply for rehabilitation services shall advise the Director of Program Services or a designee.

(2) The Director of Program Services or a designee and the employee shall select a counselor to take the application. If practicable, the counselor shall be located in an adjacent district to the district in which the employee resides.

Section 3. Employees' Relatives' Applications for Services. An employee shall not take an application or provide vocational rehabilitation services to a relative. The relative shall be referred to the Director of Program Services or a designee. The Director of Program Services or a designee and the individual shall identify a staff member who is not a relative to take the application and to provide services as deemed appropriate.

Section 4. Legal Fees. The office shall not be responsible for any fees incurred by an applicant or eligible individual for legal services.

Section 5. Payment Rates for Purchased Services. (1) A service vendor shall not charge or accept from the applicant, eligible individual or a relative payment for services unless the amount of the charge or payment is previously known to and approved by the office.

(2) Payment to out-of-state vendors shall be governed by the rates established by the vocational rehabilitation agency in the state where services shall be provided.

Section 6. Potentially Terminal Illness. Services shall not be provided to individuals with a potentially terminal illness unless:

(1) There is a favorable medical prognosis for recovery; or

(2) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(a) If surgery, chemotherapy, nuclear medical treatment, or similar ancillary medical service is expected to cure the condition, it may be provided as with another medical problem.

(b) If the attending physician feels the prognosis is guarded, staff shall request a letter indicating the individual's work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be considered.

Section 7. Second Opinions. The office may seek a second opinion from a qualified practitioner before determining eligibility or before authorizing services.

Section 8. Self-employment Enterprises. The requirements established in this section shall be met prior to planning for self-employment for an eligible individual.

(1) An eligible individual shall undergo appropriate assessment to determine work potential, including mental and physical abilities, and interests, aptitudes, personality traits and other pertinent characteristics.

(2) An eligible individual shall participate in prevocational and small business training.

(3) An eligible individual shall obtain any required license, permit, certificate, or lease, and be in conformity with all federal and state laws and local ordinances to commence an enterprise.

(4) An eligible individual seeking to develop a self employment enterprise requiring start up costs of more than $1,000 shall:

(a) Complete a feasibility study; and

(b) Submit a business plan and have it approved by the office prior to provision of services.

(5) The office shall not be the sole source of capitalization for a self-employment enterprise with start up costs of $5,000 or more.

(a) In addition to requirements under subsection (4), an eligible individual seeking financial assistance with start up costs of $5000 to $10,000 shall contribute fifty (50) percent of the cost in excess of $5,000 either in capital or documented in kind resources and ninety (95) percent of the cost in excess of $10,000.

(b) An eligible individual shall provide documentation that the assets necessary for the required financial participation are in place prior to provision of services by the office.

(6) The total office expenditures toward the start up costs for a self employment enterprise shall not exceed $10,000. The Director of Program Services or designee may make an exception if:

(a) All provisions of subsections (1) through (5) are met; and

(b)1. The nature of the individual's vocational rehabilitation needs make it necessary that the service be provided; or

2. The denial of the service will prohibit the individual from achieving the vocational goal; or

3. The provision of the service will result in a cost savings to the Office.

Section 9. Sex Change. Office funds shall not be used to pay for sex change surgery.

Section 10. Tools and Equipment. The eligible individual shall return tools, equipment, and supplies to the office when no longer used for the employment outcome.

Section 11. Training. Postsecondary training shall be provided for an eligible individual pursuant to this section.

(1) Except as provided in subsections (2) or (3) of this section, tuition and initial registration fees provided to the training facility of the eligible individual's choice shall not exceed those of the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation. The Director of Program Services or a designee may make exceptions if it is clearly demonstrated that exceptions are necessary to achieve the employment outcome as defined in 34 C.F.R. 361.5(b)(16).

(2) The office shall provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services (e.g., interpreting services, note-taking services, tutoring services).

(3) Other office approved postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services shall be used if the total cost of attendance does not exceed the total cost of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation.

(4) Training shall be purchased only from training facilities that are accredited or licensed by appropriate accrediting or licensing bodies and which comply with all applicable state and federal requirements.

(5) Training shall be provided only to attain entry level of the employment outcome.

(6) An eligible individual planning to attend a postsecondary training facility shall apply for all financial assistance available through the training facility.

Section 12. Computer Hardware and Software Purchases. (1) Except as provided in subsection (2) of this section or in Section 13 of this administrative regulation, the office shall not purchase a computer, microcomputer, other hardware or software for the personal use of an applicant or eligible individual.

(2) The office shall consider the provision or upgrade or replacement of computer hardware and software if:

(a)1. The equipment is essential to compensate for the limitations caused by the disability; or

2. The equipment is required for the eligible individual to achieve or maintain a vocational objective of competitive employment; and

(b) One (1) or more of the following criteria are met:

1. The equipment is required for vocational preparation;

2. The equipment is required to perform the job and no provision is made by the employer to supply the equipment; or

3. The equipment enables an eligible individual to become competitive with nondisabled employees performing the same duties.

Section 13. Second Time Upgrades or Replacements. (1) Except as provided in subsection (2) of this section, the office shall not provide more than one (1) computer upgrade or replacement per individual.

(2) The office shall approve a second time upgrade or replacement if:

(a) The eligible individual has demonstrated a two (2) year continuous work history; and

(b) The eligible individual's employer attests that the upgrade or replacement is needed to maintain employment.

Section 14. Transplants or Implants. A transplant or implant procedure which is experimental or which does not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the office.

Section 15. Vehicle Purchase. The office shall not purchase a vehicle unless the occupation of the eligible individual requires a vehicle as occupational equipment.

Section 16. Visual Impairments. An eligible individual with a secondary disability of visual impairment shall be served if another impairment, other than visual, results in a more substantial impediment to employment.

BETH SMITH, Executive Director

APPROVED BY AGENCY: April 15, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, May 27, 2010 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capital Plaza Tower, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than May 20, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601, phone (502) 564-1481, fax (502) 564-9990.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick B. Shirley, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act to provide vocational rehabilitation services to Kentuckians, specifically the provision of self-employment services mandated by Section 723(b)(1) of the Rehabilitation Act and regulation, 34 C.F.R. 361.49.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of Section 723(b)(1) of the Rehabilitation Act and regulation, 34 C.F.R. 361.49.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of self-employment services as set out in, and mandated by, Section 723(b)(1) of the Rehabilitation Act and regulation, 34 C.F.R. 361.49.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of

the state's provision of self-employment services to applicants and eligible individuals with disabilities as required by Section 723(b)(1) of the Rehabilitation Act and regulation, 34 C.F.R. 361.49.

(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 proposed amendments are made to adapt the regulations to provide better guidance to individuals with disabilities and to provide for more efficient use of limited agency resources. The revisions enhance and more clearly set out expectations and requirements that individuals with disabilities have regarding provision of self-employment services.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to prevent possible abuse or waste of increasingly limited resources for operation of the program. Self-employment services are a vital part of vocational rehabilitation services and the agency has found that its resources are increasingly limited for this program. The changes made to the regulation were needed to more clearly define what can be provided to each applicant and eligible individual with disabilities and when it could be provided.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of providing self-employment services to applicants or eligible individuals as necessary for the achievement of the employment outcome.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to individuals with disabilities on what is required to obtain self-employment services, when those services can be provided, and what continuing obligations the consumer may have.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any disabled individual with a disability seeking vocational rehabilitation self-employment services to assist in the achievement of an employment outcome, all vocational rehabilitation staff statewide that assist disabled individuals with disabilities seeking self-employment services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Agency staff will only have to apply the regulations as written, ensuring that the monetary limits are applied correctly. Applicants or eligible individuals with disabilities may be required to provide for more financial resources as the cost the self-employment service increases as a result of this amendment. The amendments also provide more specific guidance to clear up any ambiguities and to ensure that resources are used efficiently.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to the staff affected. Applicants or consumers with disabilities will be required to provide more of the funding for self-employment services that exceed $5,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is anticipated that agency staff will be able to provide self-employment services to a larger pool of applicants and consumers. Applicants and eligible individuals with disabilities will have a better understanding of the requirements for obtaining self-employment services and what is expected of them because the amended regulations provide more specific guidance than what previously existed.

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

(a) Initially: No additional costs are expected.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. 701 et seq., 29 U.S.C. 723(b)(1), 34 C.F.R. 361.49.

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

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

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

(c) How much will it cost to administer this program for the first year? There shall be no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(Amendment)

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 34 C.F.R. 361.36, 361.54, 29 U.S.C. 721(a)(5), (15), (21)(A)

STATUTORY AUTHORITY: KRS 151B.185(2), (3), 151B.195(1), 29 U.S.C. 709(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Executive Director, Office of Vocational Rehabilitation, to promulgate administrative regulations governing the services and administration of the Office of Vocational Rehabilitation. 34 C.F.R. 361.36(b) requires the office to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection for state vocational rehabilitation services. 34 C.F.R. 361.36(d) established federal guidelines for the imposition of an order of selection. This administrative regulation establishes when an order of selection and an economic need test shall be applied to the provision of vocational rehabilitation servic-

es in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions. (1) "Eligible individual" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services.

(2) "Executive director" means Executive Director of the Office of Vocational Rehabilitation.

(3) "Individual with a most significant disability" means an individual who has a significant disability and who:

(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or

(b) Has serious limitations in four (4) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

(4) "Office" means the Office of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(5) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that:

(a) Is unlikely to be corrected through surgical intervention or medical treatment; and

(b) Differs from a mental or physical condition that can be remedied through the provision of a physical or mental restoration service.

Section 2. Economic Need. (1) Economic need shall be considered in determining whether to grant vocational rehabilitation services.

(2) The executive director shall exempt services from the economic needs test if the office is able to provide services to all eligible individuals with significant disabilities pursuant to Section 3 of this administrative regulation, with consideration of applicable comparable benefits as provided in 34 C.F.R. 361.53.

(3) An economic needs test shall be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services;

(b) Tuition and registration fees for vocational or college training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;

(f) Occupational licenses, tools, equipment, or initial stock (including livestock) or supplies;

(g) Postemployment services except as provided in subsection (4)(a)-(m) of this section;

(h) Other goods and services which can reasonably be expected to benefit an eligible individual in terms of employment outcomes [~~or~~];

(i) Initial vehicle and property modifications in excess of $10,000;

(j) Second or subsequent vehicle modifications regardless of cost; or

(k) Vehicle modification repair or upgrades.

(4) The following services shall be excluded from an economic needs test:

(a) Assessment for determining eligibility and vocational rehabilitation needs;

(b) Counseling and guidance;

(c) Placement;

(d) Services provided by staff at state-owned and operated rehabilitation facilities;

(e) Rehabilitation technology (except as provided in subsection (3) of this section);

(f) Communication assistance in the individual's native language;

(g) Books, supplies, tools or equipment for vocational or other training;

(h) Supported employment;

(i) Interpreter services for the deaf;

(j) Reader services for the blind;

(k) Personal assistance services;

(l) Tutors, note takers, or assistive technology education aids; or

(m) Other training, including driver training, on-the-job training, job coaching, job development or training.

(5) The office's economic needs test shall be based on the most current Kentucky Median Adjusted Gross Income developed by the U.S. Department of Commerce. If the individual has a monthly income that exceeds 100 percent of the most current median gross income, the individual shall apply the excess income to rehabilitation services necessary to achieve the employment goal except as provided for in 34 C.F.R. 361.54.

Section 3. Order of Selection. If the executive director determines that the office shall be unable to provide services to all eligible applicants, the office shall implement the order of selection.

(1) An eligible individual previously declared eligible for and receiving vocational rehabilitation services under an individualized plan for employment shall not be affected if the office implements an order of selection.

(2) The order of selection shall not regulate the provision of information or referral services.

(3) On implementation of the order of selection, the office shall continue to accept referrals of and applications from individuals with disabilities.

(4) The order of selection shall not regulate the provision or authorization of assessment for determining eligibility.

(5) An applicant shall be declared eligible or ineligible as appropriate.

(6) An eligible individual entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual shall be served. If the priority category is closed, the individual's case shall be held in accepted status until the priority category assigned is opened or the order of selection is lifted.

(7) The order of selection policy shall permit immediate reclassification into a higher priority category if circumstances justify the reclassification.

(8) If the office is unable to provide services to all eligible individuals with significant disabilities, the office shall serve eligible individuals with a most significant disability first and then serve eligible individuals with a significant disability on a first-applied, first-served basis, as established by the date of application.

(9) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(10) The order of selection system shall have five (5)[~~six (6)~~] priority categories as follows:

(a) Priority I - eligible individuals with a most significant disability.

(b) Priority Category II - eligible individuals with a significant disability who have serious limitations in three (3) functional capacities.

(c) Priority Category III - eligible individuals with a significant disability who have serious limitations in two (2) functional capacities.

(d) Priority Category IV - eligible individuals with a significant disability who have serious limitations in one (1) functional capacity.

(e) Priority Category V - eligible individuals with a nonsignificant disability [~~that results in permanent functional limitations.~~

~~(f) Priority Category VI - all other eligible individuals whose disability is nonsignificant~~].

BETH SMITH, Executive Director

APPROVED BY AGENCY: April 15, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, May 27, 2010 at 10 a.m. at the offices of the Education

and Workforce Development Cabinet, 500 Mero Street, Capital Plaza Tower, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than May 20, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601, phone (502) 564-1481, fax (502) 564-9990.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick B. Shirley, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act to provide vocational rehabilitation services to Kentuckians, specifically the order of selection of services and financial need provided for in Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. 361.36, 361.54.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. 361.36, 361.54.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of rehabilitation services as set out in, and mandated by, Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. 361.36, 361.54.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's provision of rehabilitation services to applicants and eligible individuals with disabilities as required by Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. 361.36, 361.54.

(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 proposed amendments are made to adapt the regulations to provide better guidance to individuals with disabilities and to provide for more efficient use of limited agency resources. The revisions expand on what services will be subject to an economic needs test that consumers obtain from the agency, specifically for second vehicle modifications, and repairs and upgrades of existing vehicle modifications. The amendments also eliminate one category of the order of selection for services for individuals with the most nonsignificant disabilities.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to prevent possible abuse or waste of increasingly limited resources for operation of the program. The changes made to the regulation were needed to more clearly define what can be provided to each applicant and eligible individual with disabilities and when it could be provided.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of providing rehabilitation assistive technology devices to applicants or eligible individuals as necessary for the achievement of the employment outcome.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to individuals with disabilities on what is required to obtain vocational rehabilitation services, when those services can be provided, and what services may be provided in the future.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any disabled individual with a disability seeking vocational rehabilitation vehicle modifications to assist in the achievement of an employment outcome, and all vocational rehabilitation staff statewide that assists disabled individuals with disabilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Agency staff will not have any additional requirements as a result of this amendment. Individuals with disabilities seeking second vehicle modifications or repairs or upgrades of existing modifications will be subject to proof of financial need.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to the individuals, staff or businesses affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both agency staff and applicants and eligible individuals with disabilities will have a better understanding of the requirements for obtaining rehabilitation assistive technology devices because the amended regulations provide more specific guidance than what previously existed.

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

(a) Initially: No additional costs are expected.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. 701 et seq., 29 U.S.C. 721(a)(5), 34 C.F.R. 361.36, 361.54.

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

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

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

(c) How much will it cost to administer this program for the first year? There shall be no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(Amendment)

781 KAR 1:040. Rehabilitation technology services.

RELATES TO: KRS 151B.190, 29 U.S.C. 705(30), 723

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Executive Director, Office of Vocational Rehabilitation to promulgate administrative regulations governing the services and administration of the Office of Vocational Rehabilitation. This administrative regulation prescribes when, and under what conditions, rehabilitation technology services shall be provided, in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions. (1) "Certified Driver Rehabilitation Specialist" means a driver rehabilitation specialist who has obtained certification to provide services from ADED, Inc. (the Association for Driver Rehabilitation Specialists with its executive office in Hickory, North Carolina). The certification process includes background, experience, and a certification exam.

(2) "Driver Evaluation" means a clinical and behind-the-wheel evaluation by a certified driver rehabilitation specialist to identify a consumer's driver rehabilitation needs to allow him or her to drive independently.

(3) "Driver Rehabilitation Specialist" means an individual who plans, develops, coordinates, and implements driver rehabilitation services for individuals with disabilities.

(4) "Driver training" means behind-the-wheel instruction required to teach an individual with a disability to drive with or without vehicle modifications.

(5)[~~"Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment.~~

~~(2)~~] "Eligible individual" means an individual who has been determined by an appropriate office staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

(6) "Extended driver evaluation" means in those cases where an individual's ability to drive cannot be determined after a driver's evaluation, an extended training may be undertaken to aid in the determination. The length and amount of training is strictly monitored by the Driver Rehabilitation Technology Program Administrator.

(7) "Family" means spouse, children, parents, grandparents, or siblings.

(8)[~~(3)~~] "Office" means the Office of Vocational Rehabilitation and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(9) "Rehabilitation technology specialist" means an individual who analyzes the needs of individuals with disabilities, assists in the selection of the appropriate assistive technology, and trains the consumer on how to properly use the specific equipment.

Section 2. Driver Rehabilitation Technology Services. (1) Driver rehabilitation technology services may be provided if:

(a) Personal transportation is required to meet the job goals specified on the individualized plan for employment;

(b) Other modes of transportation such as public transportation are not available; and

(c) The individual meets the economic need qualifications established in 781 KAR 1:030, Section 2.

(2) Driver training and extended driver evaluation may be provided if:

(a) The services are recommended by a certified driver rehabilitation specialist;

(b) The eligible individual meets the criteria for vehicle modification, if required; and

(c) The consumer agrees to obtain additional practice as recommended.

(3) Driver rehabilitation technology services may be provided to an eligible individual who does not meet the requirements of subsection (2) of this section if the director of program services or designee determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment, as that term is defined in 34 C.F.R. 361.45; or

(b) The provision of the service would result in a substantial cost savings to the office.

Section 3. Vehicle Modification Services. (1) Modification of a private vehicle shall be authorized if the eligible individual:

(a) Completes a driver evaluation and vehicle modification assessment by a rehabilitation technology specialist; and

(b) Obtains a vehicle modification prescription from an approved rehabilitation technology specialist.

(2) Modification of a private vehicle shall be provided on the most cost-effective vehicle necessary for the individual's personal transportation for employment, using the most cost-effective means of modification.

(3) Recoverable, nonpermanent modifications shall be provided for private vehicles when available and cost-effective.

(4) A vehicle modification shall not be performed on a vehicle other than that recommended by a certified driver rehabilitation specialist, unless:

(a) The vehicle can be modified to meet the individual's needs;

(b) The vehicle is approved by a certified driver rehabilitation specialist; and

(c) The individual assumes all costs associated with the modification of the vehicle in excess of the cost of modification of the recommended vehicle.

(5) An eligible individual shall obtain a valid Kentucky operator's license before a vehicle modification to allow the individual to drive the vehicle will be approved.

(6) A vehicle modification costing in excess of $5,000 shall not be delivered to the eligible individual unless the eligible individual provides proof of insurance for the replacement cost of the vehicle and vehicle modifications.

(7) A vehicle modification costing in excess of $10,000 shall not be provided unless the eligible individual:

(a) Has a vocational objective of competitive employment;

(b) Is employed, actively seeking work, or has a reasonable expectation of beginning work within six (6) months; and

(c) The director of program services or designee determines that the modification has a direct relationship to the employment objective and that failure to provide the modification would prevent the successful achievement of the employment objective.

(8) Vehicle modifications in excess of $10,000 shall not be provided on a used vehicle unless:

(a) The vehicle is no more than two (2) years old:

(b) The odometer on the vehicle reads no more than 50,000 miles; and

(c) The rehabilitation technology specialist inspects the vehicle and determines that it is appropriate for the required modification.

(9) Vehicle modifications shall not be performed on a leased vehicle unless:

(a) The rehabilitation technology specialist inspects the vehicle

and determines that it is appropriate for the required modification;

(b) Written permission for the specific modification is obtained from the leasing company; and

(c) Recoverable, nonpermanent equipment is used.

(10) The eligible individual shall be solely responsible for providing maintenance, repair and upkeep to the modifications as specified in any relevant warranties.

(11) The eligible individual shall pay for any maintenance, service, and repairs for modifications not under warranty except as provided in Section 4(2) of this administrative regulation.

Section 4. Upgrade and Repair of Vehicle Modifications. (1) An upgrade to a vehicle modification shall not be provided unless:

(a) The upgrade is required due to a medically documented change in status or function that necessitates a change in driving equipment or vehicle chassis;

(b) The eligible individual is employed; and

(c) If the upgrade involves the purchase of a driving system, the vehicle is inspected by the rehabilitation technology specialist and found to be appropriate for the proposed modification and meets all manufacturer requirements for the proposed driving system.

(2) A repair to a vehicle modification may be provided if:

(a) The eligible individual is currently competitively employed;

(b) The repair is not required as a result of the eligible individual's negligence, misuse, or abuse of the equipment or failure to provide proper maintenance of the equipment;

(c) The eligible individual provides the office with maintenance records for the vehicle and vehicle modifications;

(d) The rehabilitation technology specialist inspects the maintenance records and determines that the maintenance has met manufacturer requirements; and

(e) The rehabilitation technology specialist inspects the vehicle and modifications and determines that it is reasonable to repair the modification.

(3) An upgrade or repair to a vehicle modification costing in excess of $10,000 shall not be provided unless the director of program services or his or her designee determines that failure to provide the update or repair would prevent the successful maintenance of competitive employment or would result in a significant cost savings to the office.

Section 5. Repeat Vehicle Modifications. (1) Except as provided in this section, the office shall not provide more than one (1) vehicle modification per eligible individual.

(2) The office may provide a repeat vehicle modification if:

(a) The eligible individual is currently working competitively;

(b) The eligible individual has a five (5) year work history since the last modification and has been working consistently for a minimum of two (2) years;

(c) The previously modified vehicle has at least 105,000 additional miles on it since the last modification;

(d) The rehabilitation technology specialist inspects the vehicle and modifications and recommends replacement of the vehicle or modifications;

(e) The eligible individual provided the office with a maintenance record for the vehicle and modifications that demonstrates that the maintenance has been provided according to manufacturer requirements;

(f) The eligible individual completes a driver evaluation by an agency approved specialist and obtains a vehicle modification prescription from the specialist; and

(g) The director of program services or designee determines that failure to provide the repeat modification will prevent successful maintenance of competitive employment or would result in a significant cost savings for the office.

Section 6. Property Modification. (1) Permanent, nonrecoverable modification to a private home, business, or property may be provided if:

(a) A qualified rehabilitation counselor determines it is essential to achieve the employment objective of the eligible individual;

(b) A direct relationship between the provision of the modification and the employment objective is demonstrated;

(c) The eligible individual meets economic needs qualifications established in 781 KAR 1:030, Section 2;

(d) The eligible individual is employed, actively seeking work, or has a reasonable expectation of beginning work within six (6) months;

(e) A property modification assessment is completed by a rehabilitation technology specialist;

(f) The eligible individual or family member owns the property to be modified and is current on all mortgage payments, if the property is mortgaged; and

(g) The eligible individual has not received permanent, nonrecoverable modifications to a home from the office in the past.

(2) Property modifications in excess of $30,000 or twenty (20) percent of the Property Value Administrator (PVA) assessment value of the home or property shall not be provided.

(3) Property modifications shall be limited to the most cost effective means of safely addressing the disability needs of the eligible individual as required for employment and shall:

(a) Be recoverable, nonpermanent modifications, if possible;

(b) Be cost effective;

(c) Provide access to one (1) entrance to and exit from the home, business, or property;

(d) Provide access to entrance to and exit from one (1) bathroom area and use of the facilities in that bathroom; and

(e) Allow access to corridors necessary to access the bathroom and entrance and exit area of the property.

(4) Property modifications shall not be provided to homes or properties purchased within the last two (2) years unless there is medical documentation to support a finding that there has been a significant change in status or function of the eligible individual that has occurred since the initial purchase of the property, thus making the modification presently necessary, and that such a finding could not have been anticipated at the time of purchase.

(5) Property modifications shall not include structural additions to existing properties or the purchase of new property.

(6) The office shall not restore modified property to its original condition or upgrade areas of the property not affected by the modification into compliance with current local building codes.

(7) All changes or additions to the recommendations of the rehabilitation technology specialist must be approved, in writing by the rehabilitation technology specialist and the cost of all changes or additions shall be assumed by the eligible individual.

(8) The eligible individual shall provide maintenance, repair, and upkeep to the modifications as required for relevant warranties.

(9) The eligible individual shall be solely responsible for maintenance, service, and repairs for modifications not under warranty.

(10) Property modifications may be provided to an eligible individual that does not meet all the requirements of this section if the director of program services or his or her designee determines, supported by adequate documentation, that failure to provide the modification would prevent the successful achievement of the vocational objective or would result in a significant cost savings to the office. [~~Section 2. Vehicle Modification. (1) Modification of a van for an eligible individual determined by an office specialist to be unable to transfer independently into and out of an automobile shall not be authorized over the maximum cost of the automobile modification.~~

~~(2) A vehicle modification costing in excess of $5,000 shall not be provided unless the eligible individual:~~

~~(a) Completes a driver evaluation and vehicle modification assessment by an office specialist;~~

~~(b) Obtains a recommendation from an office specialist;~~

~~(c) Has a vocational objective of competitive employment; and~~

~~(d) Is within two (2) years of job placement.~~

~~(3) Vehicle modifications shall be provided to an individual who is not within two (2) years of job placement if the Director of Program Services determines that documentation exists that the modification results in a substantial cost savings to the office.~~

~~(4) The office shall not provide vehicle modifications in excess of $5,000 for vehicles older than two (2) years or with more than 25,000 miles unless the overall condition of the vehicle justifies the modifications as attested by an office specialist.~~

~~Section 3. Upgrading and Repair of Vehicle Modification. (1) Vehicle modification upgrades and repair shall be provided for an eligible individual if needed for obtaining or maintaining employment.~~

~~(2) Upgrade or repair of vehicle modifications in excess of $10,000 shall be provided if the Director of Program Services determines that the modification has a direct relationship to the employment goal and that failure to provide the modification precludes the successful achievement of the employment goal.~~

~~Section 4. Second Time Modifications. (1) Except as provided in this section, the office shall not provide more than one (1) vehicle modification per eligible individual.~~

~~(2) The office may approve a second time vehicle modification under the following conditions:~~

~~(a) The eligible individual has demonstrated a two (2) year continuous work history;~~

~~(b) The eligible individual's employer attests that the modification is needed to maintain employment; and~~

~~(c) The modification has met a seven (7) year Internal Revenue Service depreciation schedule from the date of first modification.~~

~~Section 5. Property Modification. (1) Permanent, nonrecoverable modification to a private home, business, or property shall be an allowable expenditure if determined by an office specialist to be essential to achieve the employment objective of the eligible individual. A direct relationship between the provision of the modification and the projected employment goal shall be demonstrated. The eligible individual shall meet economic need qualifications established in 781 KAR 1:030, Section 2. The eligible individual shall use recoverable, nonpermanent modifications if possible or cost effective.~~

~~(2) Except as provided in subsection (3) of this section, property modifications in excess of $10,000 shall not be allowed.~~

~~(3) Property modifications in excess of $10,000 shall be provided if the Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification precludes the successful achievement of the employment goal.~~]

BETH SMITH, Executive Director

APPROVED BY AGENCY: April 15, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, May 27, 2010 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capital Plaza Tower, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than May 20, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601, phone (502) 564-1481, fax (502) 564-9990.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick B. Shirley, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act to provide vocational rehabilitation services to Kentuckians, specifically the provision of rehabilitation assistive technology services mandated by Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of rehabilitation assistive technology services as set out in, and mandated by, Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's provision of rehabilitation assistive technology services to applicants and eligible individuals with disabilities as required by Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments are made to adapt the regulations to provide better guidance to individuals with disabilities and to provide for more efficient use of limited agency resources. The revisions enhance and more clearly set out expectations and requirements that individuals with disabilities have regarding maintenance of the technology devices that they obtain from the agency. Additionally, changes have been made to more clearly set out the limitations that the agency has with regard to modifications of real property. Changes have been made to better define and also enhance the requirements for obtaining a repeat modification of drivers technology and ensure that agency resources are used efficiently for the benefit of all applicants and eligible individuals with disabilities.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to prevent possible abuse or waste of increasingly limited resources for operation of the program. Assistive technology is a vital part of vocational rehabilitation services and the agency has found that its resources are increasingly limited for this program. The changes made to the regulation were needed to more clearly define what can be provided to each applicant and eligible individual with disabilities and when it could be provided.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of providing rehabilitation assistive technology devices to applicants or eligible individuals as necessary for the achievement of the employment outcome.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to individuals with disabilities on what is required to obtain vocational rehabilitation assistive technology devices, when those services can be provided, and what continuing obligations the consumer may have.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any disabled individual with a disability seeking vocational rehabilitation assistive technology devices to assist in the achievement of an employment outcome, all vocational rehabilitation staff statewide that assist disabled individuals with disabilities seeking assistive technology devices.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Agency staff and applicants or eligible individuals with disabilities will not have any additional requirements as a result of this amendment. The amendments only pro-

vide more specific guidance to clear up any ambiguities and to ensure that resources are used efficiently.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to the individuals, staff or businesses affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both agency staff and applicants and eligible individuals with disabilities will have a better understanding of the requirements for obtaining rehabilitation assistive technology devices because the amended regulations provide more specific guidance than what previously existed.

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

(a) Initially: No additional costs are expected.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. 701 et seq., 29 U.S.C. 705, 723, 34 C.F.R. 361.5, 34 C.F.R. 361.48.

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

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

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

(c) How much will it cost to administer this program for the first year? There shall be no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

LABOR CABINET
Kentucky Workers' Compensation Funding Commission
(Amendment)

803 KAR 30:010. Special fund assessments.

RELATES TO: KRS 131.340, 342.0011, 342.122, 342.1221, 342.1222, 342.1223(2)(g), 342.1231, 342.1223, 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-980[~~Chapter 342~~]

STATUTORY AUTHORITY: KRS 342.1223(3)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.1223(3)(f) authorizes[~~created~~] the Kentucky Workers' Compensation Funding Commission to[~~for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122. KRS 342.122 imposes special fund assessments upon workers' compensation premium for the purpose of funding and prefunding the special fund and Kentucky's Workers' Compensation Program. KRS 342.1223(3) provides the Kentucky Workers' Compensation Funding Commission with all the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including the power to make and~~] promulgate administrative regulations. This administrative regulation provides the procedures and forms to be used to report and remit special fund assessments.

Section 1. Definitions. (1) "Actual physical receipt by the KWCFC" means:

(a) Actual physical delivery to the office of the Funding Commission; or

(b) Electronic filing of the Quarterly Premiums Report, accompanied by:

1. Electronic fund transfer of an assessment due to the KWCFC account; or

2. Physical delivery of payment to the office of the Funding Commission.

(2) "Board" means, unless otherwise specified, the board of directors of the Kentucky Workers' Compensation Funding Commission.

(3) "Engaged in severance or processing of coal" is defined by KRS 342.0011(23)(b).

(4) "Insurance carrier" is defined by KRS 342.0011(22).

(5) "Insurance company" means a company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Employers Mutual Insurance Authority.

(6) "Insurance policy", for an insurance company or group self-insurer, is defined by KRS 342.0011(26).

(7) "KWCFC" or "Funding Commission" means the Kentucky Workers' Compensation Funding Commission.

(8) "Premium", for each employer carrying his own risk pursuant to KRS 342.340(1), is defined by KRS 342.0011(28).

(9) "Premium", for every group of self-insurers, is defined by KRS 342.0011(24).

(10) "Premium", for insurance companies, is defined by KRS 342.0011(25)(c).

(11) "Premiums received", for group self-insurers, including group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies, means all assessments levied on its members by a group or contributed to it by the members, including premiums charged off or deferred.

(12) "Premiums received", for insurance companies, is defined by KRS 342.0011(25)(a).

(13) "Return premiums", for insurance companies, is defined by KRS 342.0011(25)(d).

(14) "Self-insurance year", for a group self-insurer, is defined by KRS 342.0011(27).

(15) "Severance or processing of coal" is defined by KRS 342.0011(23)(a).

(16) "SIC code" is defined by KRS 342.0011(29).

(17) "Special fund assessment" means the assessment established in KRS 342.122.[~~(1) "Carrier" shall have the same meaning defined in KRS 342.0011(6).~~

~~(2) "Insurance carrier" shall have the same meaning defined in~~

~~KRS 342.0011(22).~~

~~(3) "Severance or processing of coal" shall have the same meaning defined in KRS 342.0011(23)(a).~~

~~(4) "Engaged in severance or processing of coal" shall have the same meaning defined in KRS 342.0011(23)(b).~~

~~(5) "Premium" for every group of self-insurers shall have the same meaning defined in KRS 342.0011(24).~~

~~(6) "Premium received" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(a).~~

~~(7) "Direct written premium" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(b).~~

~~(8) "Premium" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(c).~~

~~(9) "Return(ed) premiums" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(d).~~

~~(10) "Insurance policy" for an insurance company or group self-insurer shall have the same meaning defined in KRS 342.0011(26).~~

~~(11) "Self-insurance year" for a group self-insurer shall have the same meaning defined in KRS 342.0011(27).~~

~~(12) "Premiums" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the same as defined in KRS 342.0011(28).~~

~~(13) "SIC code" shall have the same meaning defined in KRS 342.0011(29).~~

~~(14) "KWCFC" or "Funding Commission" means the Kentucky Workers' Compensation Funding Commission.~~

~~(15) "Board" means the board of directors of the Kentucky Workers' Compensation Funding Commission.~~

~~(16) "Special fund assessment(s)" means the assessments imposed pursuant to KRS 342.122.~~

~~(17) "Insurance company" means a company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Employers Mutual Insurance Authority.~~

~~(18) "Premiums received" for group self-insurers, including group self-insurers electing to report their premiums and have their special fund assessments computed in the same manner as insurance companies, means any and all assessments levied on its members by such group or contributed to it by the members thereof, including premiums charged off or deferred.~~]

Section 2. Special Fund Assessment[~~Assessments~~]. (1) Special fund assessment[~~assessments~~] shall be imposed upon all premiums, including any premiums for coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. Sec. 901-945[~~Federal Black Lung~~], for an insurance policy[~~policies~~] providing Kentucky workers' compensation coverage, except special fund assessments shall not be imposed upon premiums for the following:

(a) Excess, reinsurance, or coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. Sec. 901-945,[~~Federal Black Lung coverage~~] for group or individual self-insurers;

(b) Contracts between insurance carriers and reinsurers;

(c) Longshore[~~Longshoremen's~~] and Harbor Workers'[~~Worker's~~] Compensation Act, 33 U.S.C. Sec. 901-980 coverage; and

(d) Coverage solely for persons for whom a rule of liability for injury or death is provided by the laws of the United States.

(2) For an insurance policy[~~policies~~] with provisions for deductibles effective on or after January 1, 1995, the premium[~~premiums~~] upon which a special fund assessment is[~~assessments are~~] imposed for insurance companies shall not include [~~any~~] schedule rating modifications, debits, or credits.

(3) Insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the effective date of the policy.

(4)(a) Insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums[~~returned~~] at the rate in effect on the effective date of the policy, regardless of the date the premium is actually received or returned.

(b) Additional premiums received for policies with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in [~~the~~] severance or processing of coal.

(5)(a) Group self-insurers shall report and pay special fund assessments every calendar quarter on premiums received or return premiums[~~returned~~] at the rate in effect on the effective date of the group self-insurance year for which the premium was received or returned, regardless of the date the premium is actually levied, received, or returned.

(b) A premium shall include any member assessments or contributions used to purchase excess insurance, reinsurance, or Black Lung coverage.

(6) Special fund assessment[~~assessments~~] shall be imposed upon additional premiums received by group self-insurers for self-insurance years effective prior to October 26, 1987 at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in [~~the~~] severance or processing of coal.

(7) Group self-insurers shall take credit for the return of special fund assessments at the rate in effect on the effective date of the group self-insurance year for which premiums are returned.

(8) Group self-insurers may elect to report their premiums and have their special fund assessments computed in the same manner as insurance companies.

(a) Election by an existing group self-insurer to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission [~~within sixty (60) days following the effective date of this administrative regulation~~].

(b) Election by newly formed group self-insurers to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of the group's initial self-insurance year.

(c) Failure of a group self-insurer to elect in writing to report in the same manner as an insurance company in accordance with paragraphs (a) and (b) of this subsection shall constitute an election to report and pay special fund assessments as a group self-insurer in accordance with subsections (5), (6), and (7) of this section.

(d) The election made in accordance with paragraph (a), (b), or (c) of this subsection may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years.

(e) Group self-insurers electing to report [~~their~~] premiums and have [~~their~~] special fund assessments computed in the same manner as insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the annual effective date of the individual member's policy year.

(f)1. Group self-insurers electing to report [~~their~~] premiums and have [~~their~~] special fund assessments computed in the same manner as insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums[~~returned~~] at the rate in effect on the effective date of the individual member's policy year, regardless of the date the premium is actually received or returned.

2. Additional premiums received for policy years with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in [~~the~~] severance or processing of coal.

(9)(a) Employers self-insuring [~~their~~] Kentucky workers' compensation liability under the provisions of KRS 342.340 shall pay special fund assessments on the premium calculated by the executive director of the Office of Workers' Claims in accordance with KRS 342.0011(28).

(b) One-fourth (1/4) of the total annual calculated premium shall be reported and the special fund assessments [~~thereon~~] shall be paid to the KWCFC each calendar quarter.

(10) The premium calculated by the Executive Director of the Office of Workers' Claims for individual self-insurers shall be assessed at the rates in effect on January 1 of the calendar year for which the premium is calculated.

(11)(a) Special fund assessments shall be paid quarterly[~~,~~] and are due and payable and shall[~~must~~] be received in the office of the Kentucky Workers' Compensation Funding Commission no later

than thirty (30) days following the end of each calendar quarter.

(b) If the assessment due date falls on a weekend (Saturday or Sunday), assessments due and payable shall be sent to the KWCFC [~~sufficiently~~] in advance so as to be received by the KWCFC no later than close of business, on the first business day[~~Friday~~] immediately following[~~preceding~~] the weekend due date.

(12)(a) If an insurance carrier collects from an insured a special fund assessment at a rate in excess of that established[~~imposed~~] by KRS 342.122 and this administrative regulation, or collects for any reason from an insured an amount in excess of that established[~~imposed~~] by KRS 342.122 and this administrative regulation, the insurance carrier shall refund the excess to the insured.

(b) If, after good faith[~~appropriate~~] efforts, the excess cannot be returned to the insured, the excess shall be remitted to the KWCFC[~~Funding Commission~~].

(c) An insurance carrier shall not [~~In no event shall an insurance carrier~~] retain special fund assessments in excess of those established[~~imposed~~] by KRS 342.122 and this administrative regulation.

Section 3. Penalty and Interest. The KWCFC Board or its designee may waive part or all of the penalty, but not the interest, if[~~where~~] it is shown to the satisfaction of the board [~~or its designee~~] that failure to pay assessments timely is due to reasonable cause.

Section 4. Refunds. (1) Insurance carriers may take credit for the return of special fund assessments on their quarterly premiums reports, if [~~provided~~]:

(a) The credit is taken by the insurance carrier within four (4) years of the date the insurance carrier returns the assessment to the employer; and

(b) The assessment is returned to the employer in addition to the returned premium.

(2)(a) Taxpayers may submit a claim in writing for a refund of special fund assessments not taken as a credit on the quarterly premiums report.

(b)[~~The claim shall be submitted to the Kentucky Workers' Compensation Funding Commission on Form KWCFC-03 (Claim For Refund Report).~~] The taxpayer shall submit with the claim all documents required [~~or requested~~] to support the claim[~~, and any additional information requested by the Funding Commission~~].

(3) All refunds, including those made in accordance with subsection (2) of this section, shall be subject to audit by the Funding Commission.

Section 5. Audits; General. (1) In accordance with KRS 342.1223(2)(g), the Kentucky Workers' Compensation Funding Commission shall conduct [~~periodic~~] audits independently or in cooperation with the Department of Labor or the Finance and Administration Cabinet of all entities subject to the special fund assessments established[~~imposed~~] by KRS 342.122.

(2)(a) Until the initial [~~periodic~~] audit has been completed, all records supporting reported premiums and special fund assessments, including refunds and credits, shall be maintained by the taxpayer.

(b) After completion of the initial [~~periodic~~] audit, [~~adequate~~] supporting documentation and records shall be maintained for five (5) years from the date of the last Funding Commission audit or (5) years from the date that the premium and assessment was reported or refund or credit was taken, whichever is later.

Section 6. Audits; Insurance Companies. (1) Upon request, insurance companies shall provide the Funding Commission with data files containing complete policy level detail information for every policy containing workers' compensation coverage in Kentucky with transactions during the audit period, including:

(a) Writing company's indicator;

(b) Policy number;

(c) Insured's name;

(d) Transaction code;

(e) Accounting date (YY/MM/DD);

(f) Policy effective date (YY/MM/DD);

(g) Invoice date (YY/MM/DD);

(h) Premium;

(i) Special fund assessment; and

(j) Total (premium and special fund assessment).

(2) Insurance companies shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to the respective Page 14 totals on the Annual Reports to the Kentucky Office of Insurance;

(c) A listing of Kentucky policies containing written premium written off as a bad debt;

(d) A listing of policies written by an association for which the insurance company is providing Kentucky workers' compensation coverage;

(e) A complete list of sample policies requested by Funding Commission;

(f) A complete list of deductible policies written nationwide. This list shall[~~may~~] contain at a minimum[~~only~~] the policy number, insured's name, and policy effective date;

(g) A complete listing of deductible policies written with Kentucky coverage whose policy effective date is equal to or later than 5/6/93 but not later than 12/31/93. This list shall contain either Kentucky calculated premium, deductible credit, and net deductible premium, or a list of Kentucky claims reimbursed under the deductible plan along with the associated administrative costs;

(h) A complete listing of deductible policies written with Kentucky coverage with policy effective dates on or after 1/1/94. This list shall contain Kentucky's standard premium, deductible credit, net deductible premium, any schedule rating credit, as well as all other identifying information allowing a quarterly recalculation and reconciliation; and

(i) All other information necessary to support reported premiums and special fund assessments.

(3) For insurance policies effective prior to October 26, 1987, the Funding Commission shall be furnished with:

(a) A schedule identifying the assessment rates applied to these policies;

(b) The dates upon which these rates were first entered into the policy or premium management system;

(c) The dates upon which these rates became active in the policy or premium management system; and

(d) A copy of the Kentucky Workers' Compensation Tax and Assessment Excess Collections Report as originally filed with KWCFC.

(4) The Funding Commission shall[~~may~~] utilize one (1) or more[~~any~~] of the following procedures in the completion of audits:

(a) Detailed examination of records by policy;

(b) Use of audit sampling techniques;

(c) Verification and reconciliation to NAIC reports; and

(d) Other procedures deemed necessary because of the unique nature of the entity being audited[~~the Funding Commission deems necessary~~].

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless[~~except under the following conditions~~]:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to NAIC upon which the Funding Commission had relied; or[~~.~~]

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 7. Audits; Group Self-insurers. (1) Upon request, group self-insurers shall provide the Funding Commission with data files containing complete policy or member level detail information for all transactions during the audit period, including:

(a) Group self-insurer's indicator;

(b) Policy or member number;

(c) Insured's name;

(d) Transaction code;

(e) Accounting date (YY/MM/DD);

(f) Member's effective date (YY/MM/DD);

(g) Effective date of self-insurance year;

(h) Invoice date (YY/MM/DD);
(i) Premium;
(j) Special fund assessment; and
(k) Total (premium and assessment).
(2) Group self-insurers shall make available to the Funding Commission's auditors the following items:
(a) Copies of quarterly premiums reports for each audit period with backup documentation;
(b) All documentation required to reconcile the sum of each four (4) calendar quarters to reports filed with the Office of Workers' Claims;
(c) A listing of members to whom coverage was extended for which premium has been written off as a bad debt, along with an explanation of how these bad debts were handled in the reports to the Office of Workers' Claims;
(d) A complete list of sample policies or agreements requested by the Funding Commission; and
(e) All other documents necessary to support reported premiums and assessments.
(3)[~~(2)~~] For insurance years effective prior to October 26, 1987, the Funding Commission shall be furnished:
(a) A schedule identifying the assessment rates applied to these self-insurance years;
(b) The dates upon which these rates were first entered into the policy or premium management system; and
(c) The dates upon which these rates became active in the policy or premium management system.
(4)[~~(3)~~] The Funding Commission shall[~~may~~] utilize one (1) or more[~~any and all~~] of the following procedures in the completion of audits:
(a) Detailed examination of records by policy or members' account;
(b) Detailed examination of members' agreements;
(c) Use of audit sampling techniques;
(d) Verification and reconciliation to Office of Workers' Claims' reports;
(e) Other procedures deemed necessary because of the unique nature of the entity being audited[~~the Funding Commission determines necessary~~].
(5)[~~(4)~~] Upon the completion of an audit the Funding Commission shall[~~will~~] not reaudit a period unless[~~except under the following conditions~~]:
(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to the Office of Workers' Claims upon which the Funding Commission had relied; or
(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 8. Audits; Individual Self-insurers. (1) Upon request, self-insurers shall provide the Funding Commission with the following:
(a) Loss experience reports;
(b) Payroll records;
(c) Kentucky UI-3;
(d) Federal Form 941 "Employer's Quarterly Federal Tax Return";
(e) Federal Form 940 "Employer's Annual Federal Unemployment Tax Return"; and
(f) Other information deemed necessary because of the unique nature of the entity being audited[~~Any additional information deemed pertinent or necessary~~].
(2) The Funding Commission shall[~~may~~] utilize one (1) or more[~~any~~] of the following procedures in completion of audits:
(a) Detailed examination of all required records;
(b) Use of audit sampling techniques; and
(c) Other procedures deemed necessary because of the unique nature of the entity being audited[~~the Funding Commission deems necessary~~].

Section 9. Audits; Protest and Resolution. (1) The Funding Commission shall send[~~may mail~~] to the taxpayer a notice of any assessment assessed by the Funding Commission[~~it~~].
(a) The assessment shall be final if not protested in writing to the Funding Commission within thirty (30) days from the date of notice.
(b) The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.
(c)1. Upon written request, the Funding Commission shall[~~may~~] extend the time for filing the supporting statement if it is determined that[~~appears~~] the delay is necessary and unavoidable.
2. The refusal of an[~~such~~] extension may be reviewed in the same manner as a protested assessment.
(2) After a timely protest has been filed, the taxpayer may request a conference with the Funding Commission staff.
(a) The request shall be granted in writing stating the date and time set for the conference.
(b) The taxpayer may appear in person or by representative.
(c) Further conferences may be held by mutual agreement.
(3) For those issues not resolved during the conferences described in subsection (2) of this section, the taxpayer may request a conference with the Funding Commission's Board of Directors.
(a) The request shall be granted in writing stating the date and time set for the conference.
(b) The taxpayer may appear in person or by representative.
(4) After considering the taxpayer's protest, including any matters presented at the final conference, the Funding Commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the taxpayer. The ruling shall state:
(a) That it is the final ruling of the Funding Commission and shall[~~,~~] generally state the issues in controversy;
(b)[~~,~~] The Funding Commission's position; and
(c) [~~thereon and set forth~~] The procedure for appeal to the Kentucky Board of Tax Appeals.
(5)(a) The taxpayer may request in writing a final ruling [~~at~~] any time after filing a timely protest and supporting statement.
(b) If[~~When~~] a final ruling is requested, the Funding Commission shall issue the[~~such~~] ruling within thirty (30) days from the date the request is received by the Funding Commission.
(6) After a final ruling has been issued, the taxpayer may appeal to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.340.

Section 10. Reports. (1) Insurance companies, group self-insurers and individual self-insurers shall file a Quarterly Premiums Report accompanied by the assessment due and payable for each calendar quarter.
(a) The quarterly premiums report and assessment due and payable shall be received in the office of the KWCFC no later than thirty (30) days following the end of the calendar quarter.
(b) Receipt of the Quarterly Premiums Report and assessment due and payable shall be considered timely through actual physical receipt by the KWCFC or by postmark of the U.S. Postal Service.
(2) Insurance companies [~~and group self-insurers~~] shall file Form KWCFC-01 (Quarterly Premiums Report).
(3) Employers carrying their own risk shall file Form KWCFC-02 (Quarterly Premiums Report).
(4) Group self-insurers shall file Form KWCFC-03 (Quarterly Premiums Report).
(5)(a) Every insurance company providing workers compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report[~~ANNUAL COLLECTION AND AUDIT REPORT and a SIC CODE SUMMARY REPORT~~] for each calendar year no later than April 30th following the end of the calendar year.
(b) These reports shall be submitted to the KWCFC on electronic diskettes and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-05 (Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies).
(6)(a)[~~as specified in the following instructions:~~
~~(a) Annual Collection and Audit Report:~~

~~Field 1~~	~~Reporting Insurance Co. Name~~
~~Field 2~~	~~Insurance Co. NAIC #~~
~~Field 3~~	~~Year Covered by Report~~
~~Field 4~~	~~Insured Company's Policy #~~
~~Field 5~~	~~Insured Company's Name~~

~~Field 6~~	~~Insured Company's Address~~
~~Field 7~~	~~Insured Company's City~~
~~Field 8~~	~~Insured Company's State~~
~~Field 9~~	~~Insured Company's ZIP Code~~
~~Field 10~~	~~SIC Code~~
~~Field 11~~	~~Federal ID Number~~
~~Field 12~~	~~Policy Effective Date (YY/MM/DD)~~
~~Field 13~~	~~Direct Written Premium Reported to NAIC~~
~~Field 14~~	~~Premium Reported to KWCFC~~
~~Field 15~~	~~Reconciling Entry (NAIC-KWCFC)~~
~~Field 16~~	~~All Employer Special Fund Assessment~~
~~Field 17~~	~~Additional Assessment for Coal~~

~~(b) SIC Code Summary Report:~~

~~Field 1~~	~~Reporting Insurance Co. Name~~
~~Field 2~~	~~Insurance Co. NAIC #~~
~~Field 3~~	~~Year Covered by Report~~
~~Field 4~~	~~SIC Code~~
~~Field 5~~	~~Total Direct Written Premium Reported to NAIC by SIC Code~~
~~Field 6~~	~~Total Premium Reported to KWCFC by SIC Code~~
~~Field 7~~	~~Reconciling Entry (NAIC-KWCFC)~~
~~Field 8~~	~~Total All Employer Special Fund Assessment by SIC Code~~
~~Field 9~~	~~Total Additional Assessment for Coal by SIC Code~~

~~(c) For the Annual Collection and Audit Report, 17 fields make up one (1) policy (record). For the Summary Report, nine (9) fields make up one (1) record. Fields can be up to 128 characters in width.~~

~~(d) Example (Annual Collection and Audit Report): ABC Ins. Co., Inc.; 534643; 1994; AS1234;XYZ Products,Inc.; 123Way Ave.; Frankfort; Kentucky; 40602; 2345; 93-234567; 94/03/02; 345.99; 345.99; 0;0;0<CR>.~~

~~(e) Example (SIC Code Summary Report): ABC Ins. Co., Inc.; 534643; 1994; 2345; 34567.78; 34567.78; 0;0;0<CR>.~~

~~(5)~~] Every group self-insurer providing workers compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report[~~ANNUAL COLLECTION AND AUDIT REPORT and a SIC CODE SUMMARY REPORT~~] for each calendar year no later than April 30th following the end of the calendar year.

(b) These reports shall be submitted to the KWCFC [~~on electronic diskettes~~] and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instruction incorporated by reference in Form KWCFC-06 (Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer).

(7)(a) Every individual self-insurer providing workers compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than April 30th following the end of the calendar year.

(b) These reports shall be submitted to the KWCFC and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-07 (Annual Audit and Collections Report, Data Reporting Instructions Individual Self Insurer).[~~as specified in the following instructions:~~

~~(a) Annual Collection and Audit Report:~~

~~Field 1~~	~~Reporting Group Self-insurer Name~~
~~Field 2~~	~~Group Self-insurer FEIN #~~
~~Field 3~~	~~Year Covered by Report~~
~~Field 4~~	~~Group Self-insurer's Policy or Member #~~
~~Field 5~~	~~Insured Company's Name~~
~~Field 6~~	~~Insured Company's Address~~
~~Field 7~~	~~Insured Company's City~~
~~Field 8~~	~~Insured Company's State~~
~~Field 9~~	~~Insured Company's ZIP Code~~
~~Field 10~~	~~SIC Code~~
~~Field 11~~	~~Federal ID Number~~
~~Field 12~~	~~Policy Effective Date (YY/MM/DD)~~
~~Field 13~~	~~Direct Written Premium Reported to Workers' Claims~~
~~Field 14~~	~~Premium Reported to KWCFC~~
~~Field 15~~	~~Reconciling Entry (Workers' Claims-KWCFC)~~
~~Field 16~~	~~All Employer Special Fund Assessment~~
~~Field 17~~	~~Additional Assessment for Coal~~

~~(b) SIC Code Summary Report:~~

~~Field 1~~	~~Reporting Group Self-insurer Name~~
~~Field 2~~	~~Group Self-insurer FEIN #~~
~~Field 3~~	~~Year Covered by Report~~
~~Field 4~~	~~SIC Code~~
~~Field 5~~	~~Total Direct Written Premium Reported to Workers' Claims by SIC Code~~
~~Field 6~~	~~Total Premium Reported to KWCFC by SIC Code~~
~~Field 7~~	~~Reconciling Entry (Workers' Claims-KWCFC)~~
~~Field 8~~	~~Total All Employer Special Fund Assessment by SIC Code~~
~~Field 9~~	~~Total the Summary Report, 9 fields make up one (1) record. Fields can be up to 128 characters in width.~~

~~(c) Example (Annual Collection and Audit Report): ABC Ins. Co., Inc.; 534643; 1994; AS1234; XYZ Products,Inc.; 123Way Ave.; Frankfort; Kentucky; 40602; 2345; 93-234567; 94/03/02; 345.99; 345.99; 0;0;0<CR>.~~

~~(d) Example (SIC Code Summary Report): ABC Ins. Co., Inc.; 534643; 1994; 2345; 34567.78; 34567.78; 0;0;0<CR>.~~

~~(6) The data required to be submitted to the Funding Commission in this section shall be submitted in one (1) of the following formats, listed in order of preference, or any other format agreed upon by the parties:~~

~~(a) ASCII text with a semicolon (;) used as a field separator between different fields and a carriage return to indicate the end of the record;~~

~~(b) Files saved in Microsoft Excel (DOS, Windows, Mac; any version number);~~

~~(c) Files saved in Lotus 1-2-3 (DOS, Windows, Mac; any version number);~~

~~(d) ASCII text with a tab as a field separator between different fields and a carriage return at the end of the record.~~

~~(7) The data required to be submitted to the Funding Commission in this section shall be submitted on one (1) of the following types of diskettes, listed in order of preference, or any other format agreed upon by the parties:~~

~~(a) 3.5 inch 720K PC formatted micro-floppy diskette;~~

~~(b) 3.5 inch 800K Mac formatted micro-floppy diskette;~~

~~(c) 3.5 inch 1.4Mb Mac/PC formatted micro-floppy diskette;~~]

(8) An insurance company or group self-insurer that does not write, receive, or return any Kentucky workers' compensation insurance premium during the calendar year shall complete and return Form KWCFC-04 (Nonwriter Statement) to the Kentucky Workers' Compensation Funding Commission, 42 Millcreek Park, P.O. Box 1220, Frankfort, Kentucky 40602 no later than April 30th following the end of the calendar year.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KWCFC-01 (Quarterly Premiums Report), (03/2010)";

(b) "KWCFC-02 (Quarterly Premiums Report), (03/2010)";

(c) "KWCFC-03 (Quarterly Premiums Report), (03/2010)";

(d) "KWCFC-04 (Nonwriter Statement), (03/2010)";

(e) "KWCFC-05 (Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies), (03/2010)";

(f) "KWCFC-06 (Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer), (03/2010)"; and

(g) "KWCFC-07 (Annual Audit and Collections Report, Individual Self-Insurer), (03/2010)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Workers' Compensation Funding Commission, #42 Millcreek Park, P.O. Box 1128, Frankfort, Kentucky 40602-1128, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Kentucky Workers Compensation Funding Commission Web site http://www.kwcfc.ky.gov/. [~~Forms. (1) Forms KWCFC-01, KWCFC-02, KWCFC-03, and KWCFC-04 are incorporated and adopted herein by reference.~~

~~(2) Forms may be obtained from the office of the Kentucky Workers' Compensation Funding Commission, 42 Millcreek Park,~~

~~P.O. Box 1220, Frankfort, Kentucky 40602 during office hours, 8 a.m. to 4:30 p.m., Monday through Friday.~~]

J.R. WILHITE, Executive Director

APPROVED BY AGENCY: April 7, 2010

FILED WITH LRC: April 7, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2010 at 10:30 a.m. Eastern Time at the Kentucky Workers Compensation Funding Commission #42 Millcreek Park, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given 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 June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Frank Dickerson, General Counsel, Kentucky Workers Compensation Funding Commission, #42 Millcreek Park, Frankfort, Kentucky 40602, phone (502) 573-3505, fax (502) 573-4923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Frank Dickerson, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a definition for the receipt of electronic reports and payments relative to the statutory deadline for quarterly assessments established by KRS 342.122(2).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify receipt relative to deadlines for assessment payers, due to the penalties and interest that attach when deadlines are missed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Per KRS 342.122(2) assessments shall not be paid later than the thirtieth day of the month following the end of each quarter, with receipt measured by either "actual physical receipt" or U.S. Postal Service postmark. The new regulatory language includes electronic filings and electronic fund transfers within the definition of "actual physical receipt".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The recognition of electronic filing and payment provides an additional option for assessment payers in the transmission of quarterly reports and payments. Many assessment payers are large insurance companies or corporations that already use electronic transfers in the regular conduct of their business. As electronic filing and payment are created as additional, and not required, means of the reporting requirement, payers which prefer to continue transmission by hard copy may continue to so do. With the increased options, assessment payers may select the means which is more efficient and cost-effective for their use.

(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 expands the definition of "actual physical receipt" to recognize filings and payments by electronic means, in addition to actual physical deliveries of documents.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary so that assessment payers will have a clear understanding of the applicable standard for the statutory filing deadline when using the electronic filing and payment program.

(c) How the amendment conforms to the content of the authorizing statutes: Per KRS 342.1223(3)(f) the Funding Commission shall make and promulgate administrative regulations. The deadline set for quarterly assessments at KRS 342.122(2) recognizes either "actual physical receipt" or the postmark of the U.S. Postal Service.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify the effective receipt of electronic filings and payments relative to the deadlines established at KRS 342.122.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities include all providers of workers' compensation insurance coverage in Kentucky, as well as the staff of the Funding Commission. This includes 376 active insurance companies, 525 inactive insurance companies, 164 active self-insurers, 208 inactive self-insurers, 10 active self-insured groups, 9 inactive self-insured groups, and the 15 employees of the Funding Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amended regulation provides assessment payers with an alternative means to transmit reports and payments. No new action is required, but it is anticipated that assessment payers will evaluate the new alternative to identify which option is most efficient and cost-effective for that entity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amended regulation provides an additional optional means of transmitting reports and payments and does not require any entity to change the manner in which it currently operates. As a result, the amended regulation places no direct cost on the assessment payer. It is possible that an entity's evaluation and adoption of the electronic transfer of reports and payments may result in lower costs than the delivery of hard copy documents.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit of providing the option of electronic transfer of reports and payments is that an assessment payer can evaluate and select the method that is most efficient and cost-effective for its operation.

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

(a) Initially: The Funding Commission is implementing the electronic filing and payment program in conjunction with an upgrade of its database of current and historic assessment payers, with a total construction cost of $201,940.

(b) On a continuing basis: The ongoing maintenance cost of the database and electronic filing and payment program is $5 per transaction or an estimated $10,000 to $12,000 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The annual maintenance cost will be paid from operating funds of the Funding Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding is necessary to implement this amended regulation. The Funding Commission anticipates some related cost savings through the reduction of postage and supplies for quarterly mailings as use of the electronic system increases.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amended administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to this amendment. The use of electronic filing or payment is optional for assessment payers, so each entity can evaluate which format is most efficient and cost-effective for their use.

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? Those units, parts, or divisions of state or local government which are self-insured or self-insured groups providing coverage for workers compensation injury liability.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.1223(2)(g) requires the Kentucky Workers' Compensation Funding Commission to conduct periodic audits of all entities subject to the special fund assessments imposed by KRS 342.122. KRS 342.1223(3)(f) The commission shall have all the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including but not limited to, the power to make and promulgate administrative regulations.

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 amended regulation provides an additional optional means of transmitting reports and payments and does not require any entity to change the manner in which it currently operates. As a result, the amended regulation places no direct cost on the assessment payer. It is possible than an entity's evaluation and adoption of the electronic transfer of reports and payments may result in lower cost than the delivery of hard copy documents. The benefit of providing the option of electronic transfer of reports and payments is that an assessment payer can evaluate and select the method that is most efficient and cost-effective for its operation.

(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 implementation of the electronic filing and payment program in conjunction with an upgrade of its database of current and historic assessment payers, with a total construction cost of $201,940.

(d) How much will it cost to administer this program for subsequent years? The ongoing maintenance cost of the database and electronic filing and payment program is $5 per transaction or an estimated $10,000 to $12,000 per 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:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Licensing
(Amendment)

810 KAR 1:025. Licensing thoroughbred racing.

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(4), 230.290(2), 230.300(1)(h), EO 2009-535 [~~230.320~~]

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

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

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

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

(a) Racing participants and personnel including the following: owner, authorized agent, trainer, assistant trainer, jockey, apprentice jockey, jockey agent, farm manager or agent, veterinarian, veterinary technologist or technician, veterinary assistant, farrier, vendor, mutuel clerk, exercise rider, stable employee, and any employee listed in Section 5 of this administrative regulation;

(b) Racing officials;

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

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

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

(f) Commission members.

(2) A person working at a licensed racing association in the Commonwealth shall obtain a valid license issued by the commission. The executive director, chief racing steward, or their designee may refuse entry or scratch any horse involving any person who, after being requested to obtain a valid license, fails or is unable to obtain a license.

(3)(a) A person required to be licensed shall submit:

1. A completed written application on the form Licensing Application, KHRA 25-01 (10/08), or the Multi-jurisdictional License Form pursuant to Section 7 of this administrative regulation; and

2. The fee required by Section 5 of this administrative regulation.

(b) A temporary license may be obtained by an authorized representative of an owner in accordance with Section 18 of this administrative regulation. A conditional license may be issued by the commission or its designee upon submission of a written application.

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

(2)(a) An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force.

(b) An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 18 of this administrative regulation.

(c) The license application shall be reviewed and the license issued by commission personnel.

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

(4)(a) An applicant for licensing shall be a minimum of sixteen

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

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

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

(6) The commission shall provide notice to an applicant that the license has been issued, denied, or refused. If all requirements for licensure are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Specific Licenses. (1) Veterinary personnel.

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

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician shall be accompanied by evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth, and KHRA Form 25-4 signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS 321.443.

(c) An application from a veterinary assistant shall be accompanied by a KHRA Form 25-4 signed by a licensed veterinarian certifying that the applicant is employed by him or her as required by KRS 321.443.

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

(3) Stable employee, occupational employee, or vendor employee. In order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant shall submit a KHRA Form 25-4 from his or her employer verifying employment and workers' compensation coverage.

(4) Special event licensees.

(a) A special event license shall be:

1. Issued to employees who are employed by an association only for the duration of a special event; and

2. Valid for the days of the event only.

(b) The duration of the license shall not exceed three (3) calendar days.

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

(a) $150 - owner, trainer, assistant trainer, veterinarian, jockey, jockey agent, claiming license, and temporary license;

(b) $100 - racing secretary, assistant racing secretary, director of racing, starter, assistant starter, paddock judge, patrol judge, placing judge, timer, jockey apprentice, farrier, steward, testing laboratory employee, racing department employee, valet, and outrider;

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

(d) Twenty-five (25) dollars - association employee, occupational employee, vendor employee, any person employed by a concern contracting with the association to provide a service or commodity and which employment requires that person's presence on association grounds during a race meeting, horse identifier, photo finish operator, film patrol crew member, television production employee, member of an association security department (including a policeman, watchman, fireman, ambulance driver, or emergency medical technician), track superintendent, member of maintenance department staff, admissions department manager and employee, association concessions manager and employee, parking manager and employee, and all other persons employed by the association; and

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

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

Section 6. Fingerprinting. (1) If requested, a license applicant shall furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license.

(2) If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints.

(3) The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section 7. Multi-state/National Licenses. (1) In lieu of a license application as required by this administrative regulation, an applicant may submit an ARCI Multi-State License and Information Form or the National Racing Compact License and Information Form.

(2) It shall be accepted if the commission determines that it ensures compliance with all licensing requirements in this administrative regulation and KRS Chapter 230.

Section 8. Consent to Investigate by License Applicants and Licensees. After an applicant files a license application, the commission may:

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

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

(3) Verify information provided by the applicant.

Section 9. Search and Seizure. (1) The commission or designee may search any location described in KRS 230.260(7).

(2) The commission or designee may seize any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of KRS Chapter 230 or KAR Title 810 or 811

(3) A licensee shall:

(a) Cooperate with the commission or designee during an investigation; and

(b) Respond correctly to the best of the licensee's knowledge if questioned by the commission or designee about a racing matter.

(c) Consent to out-of-competition testing at any time or place designated by the commission.

Section 10. Employer Responsibility. (1)(a) An employer shall not employ an unlicensed person for a position that requires a license under KRS 230.300 or 230.310 or this administrative regulation.

(b) If an employer does so, the employer may be subjected to license suspension, denial, or revocation under KRS Chapter 230, or KAR Title 810 or 811.

(2) Every employer shall report in writing to the commission or its designee, within twenty-four (24) hours, the discharge of any licensed employee, including the employee's name, occupation, and reason for the discharge.

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

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

(5) A licensed employer shall carry workers' compensation insurance covering his or her employees as required by KRS Chapter 342.

Section 11. Financial Responsibility. (1) A licensee shall maintain financial responsibility during the period for which the license is issued.

(2) A licensee's failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of his or her licensed occupation, shall constitute a failure to meet the financial responsibility requirements of KRS 230.310.

(3) If the licensee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked until the licensee provides written documentation of satisfaction of the judgment.

(4) An applicant for a license may be required to submit evidence of financial responsibility to the commission if a judgment has been rendered against him or her.

Section 12. Voluntary Withdrawal of License Application. (1) A license applicant may, upon the approval of the license review committee voluntarily withdraw his or her license application from the license review process.

(2) If the applicant chooses to voluntarily withdraw his or her application, then the withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice.

(3) The stewards shall issue a ruling noting a withdrawal, and the ruling shall be communicated to the ARCI.

Section 13. License Review Committee. (1) The executive director, chief racing steward, or director of licensing may refer a license application to the license review committee in lieu of denying.

(2) The license review committee shall be composed of the executive director or designee, the director of licensing or designee, the chief state steward or his or her designee, and at least one other commission member or commission staff member as designated by the executive director.

(3) At least three (3) members of the committee shall participate in any license review committee meeting.

(4) If a referral to the committee is made, then a license shall not be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee to appear personally. If the committee is unable to make a favorable ruling on the license application, then the committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section 13 of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.

(5) The denial or refusal of the application shall be subject to appeal in accordance with KRS Chapter 13B.

(6) In the alternative, the commission, the license review committee, or the executive director may refer the case directly to the commission without denial or approval of the application.

Section 14. License Denial, Revocation, or Suspension. (1) The commission, executive director, chief racing steward, or director of licensing may refuse or deny a license application, and the commission or chief state steward may suspend or revoke a license, or otherwise penalize in accordance with KRS 230.320(1) a licensee, or other person participating in horse racing, for any of the following reasons:

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

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

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

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

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

(f) The licensee or applicant has applied for and received a license at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A firearm; or

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

(t) The licensee or applicant has violated any of the alcohol or substance abuse provisions outlined in KRS Chapter 230 or 810 KAR 1:060;

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

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

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

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

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

2. Failure to race when programmed unless excused by the stewards;

3. Fighting;

4. Assaults;

5. Offensive and profane language;

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

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

8. Disturbing the peace;

(y) The licensee or applicant has used profane, abusive, or

insulting language to or interfered with a commission member, employee or agent, or racing official, while these persons are in the course of discharging their duties;

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

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

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

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

(dd) The licensee or applicant has failed to comply with a written directive or ruling of the commission or the chief state racing steward;

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

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

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

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

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

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

1. A hypodermic needle, hypodermic syringe, or other device which could be used to administer any substance to a horse, except as permitted by 810 KAR 1:018, Section 3(5); or

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

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

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the chief steward, and to the ARCI by the Division of Licensing, to ensure that other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

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

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

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

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

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

(a) Criminal charges;

(b) Criminal convictions;

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

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

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

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

Section 17. Temporary Licenses. (1)(a) Only an owner is eligible for a temporary license.

(b) A horse in a trainer's care shall not start in a race unless the owner has a current license or has an application for a temporary license, "Application for a Temporary Owner's License", KHRC 25-02 (01/10), on file with the commission.

(c) A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains.

(d) The commission may refuse the license if the applicant fails to supply a name, Social Security number, and mailing address for a temporary license.

(e) A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the 30th day pending completion of all licensing procedures.

(f) Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended or the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures.

(g) Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(h) If a temporary license expires prior to the completion of all owner licensing procedures, the applicant shall pay an additional licensing fee.

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

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

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

Section 19. Conflict of Interest. (1) The license review committee and the chief state steward or designees shall deny or refuse to process the license of a person, and the commission or the chief state steward shall revoke or suspend a licensee, who is determined to have a conflict of interest. A conflict of interest may exist if a spouse, immediate family member, or other person in a similar relationship to the licensee or applicant holds a license which the license review committee or chief state steward find to be a conflict of interest with the licensee's or applicant's. A finding of a conflict of interest may be appealed to the commission pursuant to KRS 230.320 and KRS Chapter 13B.

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

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

(a) Racing official;

(b) Assistant starter;

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

(d) Veterinary technician, veterinary technologist, veterinary assistant, or equine therapist for any horse other than the owner's;

(e) Officer or managing employee;

(f) Track maintenance supervisor or employee;

(g) Outrider;

(h) Race track security employee;

(i) Farrier;

(j) Photo finish operator;

(k) Horsemen's bookkeeper;

(l) Racing chemist;

(m) Testing laboratory employee;

(n) Jockey;

(o) Apprentice jockey; or

(p) Jockey agent.

(4) More than one (1) license to participate in racing may be granted to a person except if prohibited by this administrative regulation due to a potential conflict of interest.

Section 20. License Photo Identification Badges. (1)(a) If a licensee desires access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge).

(b) A photo identification badge is available to a licensee upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.

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

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

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

(5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the executive director, the stewards, the commission director of security, or director of licensing, or designee, upon request.

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

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

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

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

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

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

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

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

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

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

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

(a) "Licensing Application", KHRC 25-01, (3/10);

(b) "Application for a Temporary Owner's License", KHRC 25-02 (1/10);

(c) "Change in Application Information Form", KHRC 25-03 (1/10); and

(d) "Veterinarian Authorization Form", KHRC 25-04 (1/10).

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

[~~(1) Information provided on or with license application shall be complete and correct.~~

~~(2) A licensee shall abide by all rulings, and decisions of the stewards and all decisions by the stewards shall remain in force unless reversed or modified by the commission upon proper appeal.~~

~~(a) Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to:~~

~~1. Findings of fact as occurred during and incident to the running of a race; and~~

~~2. A determination of the extent of disqualification of horses in a race for fouls committed during the race.~~

~~(b) Excepted rulings and decisions by the stewards shall be final with no right of review by the commission.~~

~~(3)(a) A licensee shall consent to a reasonable search of his property in his possession by the commission or its representatives, the property being restricted to that on association grounds and including tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort.~~

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

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

~~(4)(a) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard the horses from tampering.~~

~~(b) Upon a finding of a positive test result for a prohibited medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance, in a saliva, urine, blood, or other specimen taken from a horse, the trainer of the horse shall be held responsible for the test results unless the trainer can establish that the stimulant, sedative, depressant, local anesthetic, or any foreign substance was administered to the horse by another person.~~

~~Section 2. The commission may issue a license to an association which applies for a license to conduct a thoroughbred race meeting on days as the commission may deem appropriate.~~

~~Section 3. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order other disciplinary measures, on the following grounds:~~

~~(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where the applicant was denied a license or where his license was suspended or revoked;~~

~~(2) Conviction of a crime or violation of any statute or administrative regulation;~~

~~(3) Falsification, misrepresentation, or omission of required information in a license application to the commission.~~

~~(a) Failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; or~~

~~(b) Misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;~~

~~(4) Making false or misleading statements to the commission or the stewards in an application for a license or in the course of an investigation;~~

~~(5) Failure to comply with any order or ruling of the commission, stewards, or racing official;~~

~~(6) Ownership of any interest in, or participation by any manner in, any bookmaking, pool selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in these activities;~~

~~(7) Applying for an receiving a license by a person less than sixteen (16) years of age;~~

~~(8) Being incompetent or unqualified in the performance of the activity for which the license is granted as determined by standard examinations prescribed by the stewards;~~

~~(9) Intoxication, use of profanity, fighting or any conduct of a disorderly nature on association grounds;~~

~~(10) Employment or harboring of unlicensed persons required by these administrative regulations to be licensed;~~

~~(11) Discontinuance of or ineligibility for activity for which license was issued;~~

~~(12) Possession on association grounds, without written permission from the commission or stewards, of:~~

~~(a) Firearms;~~

~~(b) Battery, buzzer, or electrical device; or~~

~~(c) Other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout;~~

~~(13) Possession on association grounds by a person other than a licensed veterinarian of:~~

~~(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse; or~~

~~(b) Medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance prohibited by the commission;~~

~~(14) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while these persons are in the discharge of their duties;~~

~~(15) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;~~

~~(16) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;~~

~~(17) Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;~~

~~(18) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;~~

~~(19) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, may be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized; or~~

~~(20) Aiding or abetting any person in violation of any administrative regulation of the commission.~~

~~(21) A licensee's failure to satisfy a judgment rendered against him, for goods, supplies, services or fees furnished him and used in the course of his 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 said judgment is inconsistent with the best interests of racing and the maintenance of honesty, integrity and high quality thereof and is cause for suspension of the license and denial of any renewal of same.~~

~~Section 4. License Applications for Associations. Persons or legal entities desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license. Applications shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made. The application shall contain:~~

~~(1) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with the degree of ownership or type of interest shown;~~

~~(2) Names and addresses of persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary;~~

~~(3) Corporations, partnerships, or other legal entities which own or control a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities with the degree of ownership or type of interest pertaining to the ownership or interest;~~

~~(4) Names of racing officials and persons responsible for track security and fire protection;~~

~~(5) Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any;~~

~~(6) An operating report on forms prescribed by the commission if the applicant is currently licensed.~~

~~Section 5. License Application for Participants in Racing. (1)(a) Any person other than an association required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.~~

~~(b)The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.~~

~~(2) An application from a person not previously licensed in Kentucky shall include the names of two (2) reputable persons who shall attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.~~

~~(3) An application from a person whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.~~

~~(4)(a) An application from a person, corporation, partnership, lessor, or other entity involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of the horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.~~

~~(b) An application shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made.~~

~~(5)(a) An application from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.~~

~~(b) An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not be considered as participating in racing in this state.~~

~~(6) An application from a person desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who shall attest to the technical competence of the applicant and under whose sponsorship and direction the applicant shall work on association grounds.~~

~~(7) An application from a person not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until the applicant has successfully completed a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of the applicant for a farrier's license.~~

~~(8) The following annual fees shall accompany the application and shall not be refundable:~~

~~(a) $100 - owner, trainer, assistant trainer, veterinarian, farrier, apprentice farrier, jockey, jockey agent, racing official, steward, testing laboratory employee; racing department employee, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, claiming license, and temporary license;~~

~~(b) Seventy-five (75) dollars - jockey apprentice;~~

~~(c) Fifty (50) dollars - veterinarian assistant, dental technician, stable area supplier license (for suppliers of horse feed, tack, medication, or food vendors), mutuel employee, farm manager, farm agent;~~

~~(d) Twenty-five (25) dollars - association employee, occupational employee, vendor employee, or any person employed by a concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, photo finish operator, film patrol, television production employees, association security department including policemen, watchmen, firemen, ambulance drivers, emergency medical technicians, track superintendent, maintenance department staff, admissions department manager and employees, association concessions manager and employees, parking manager, and employees, all other persons employed by the association;~~

~~(e) Ten (10) dollars – special event mutuel employee license.~~

~~1. Stable foreman, exercise personnel, hotwalker, groom, watchman, pony person; and~~

~~2. Special event mutuel employee license which shall be valid for the day of the event only.~~

~~(9) The fee for a duplicate license shall be ten (10) dollars.~~

~~Section 6. Licensing Committee. (1) The commission may appoint a licensing committee which may include the executive director and commission steward or their designated representative.~~

~~(2) The licensing committee shall review all applications for all licenses, and forward the applications to the commission with recommendations, subject to security checks, for final action.~~

~~(3) The licensing committee may issue to a license applicant a temporary permit to participate in the activity for which a license application was made pending administrative processing and final action on license application by the commission.~~

~~Section 7. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.~~

~~Section 8. Possession of License Required. A person required to be licensed by this administrative regulation shall not participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license and having the license in his possession. Licenses specified under Section 5(8)(a), (b), (c), (d), and (e) of this administrative regulation shall include a color photograph of the licensee and shall be openly displayed on the backside of association grounds at all times. An owner shall not be required to have a color photograph included on his or her license.~~

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

~~(a) "Licensing Application" (KRC-15(10/02));~~

~~(b) "Race Track License Application", (KRC-16 (12/01)); and~~

~~(c) "Corporate Disclosure Form", (KRC-17 (12/01)).~~

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

ROBERT M. BECK, JR., Chairman
LARRY BOND, Deputy Secretary

APPROVED BY AGENCY: March 24, 2010

FILED WITH LRC: March 26, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2010, at 1 p.m. at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by May 20, 2010, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, 810 KAR 1:025, governs the licensing of individual participants in thoroughbred horse racing in the Commonwealth of Kentucky.

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

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

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

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

(a) How the amendment will change this existing administrative regulation: This amendment contains several substantive changes which update the licensing standards for thoroughbred racing and increase the licensing fee in some categories of licenses, in order to insure that there is adequate funding for operational costs of the commission. It provides definition to the commission's right to search and seize suspected contraband during investigations of suspected violations of KRS Chapter 230 and KAR Title 810. In addition, it also amends the language of the regulation to conform to KRS Chapter 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to update the licensing standards for thoroughbred racing to be consistent with 810 KAR 1:034E, and to increase the licensing fees to provide adequate funding for the Kentucky Horse Racing Commission.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 17,000 thoroughbred licenses are issued in a calendar year to a variety of licensees, including owners, trainers, assistant trainers, jockeys, stable employees, veterinary personnel, racing officials, farriers, vendors, agents, mutuel clerks, agents, and employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: All of the above entities will be impacted by updates in licensing standards and procedures. The increase in licensing fees from $100 to $150 will apply to owners, trainers, assistant trainers, jockeys, jockey agents, and veterinarians. This fee increase will affect approximately 8,000 license applicants in these categories.

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to comply with the updates to the licensing regulations. There will be a $50 increase in licensing fees to owners, trainers, assistant trainers, jockeys, jockey agents, and veterinarians.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All participants will benefit from

better notice regarding the requirements and procedures to obtain a license and increased regulatory oversight of licensees.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.240(2), 230.260, 230.290(2), 230.300(1)(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. Will increase funding for thoroughbred racing by approximately $400,000.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? See above.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See above.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amendment)

815 KAR 7:070. The Kentucky Certified Building Inspector Program.

RELATES TO: KRS 198B.040(3), 198B.050(3)(c), (6), 198B.060, 198B.090, 198B.095, EO 2009-535

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.090(1)(a), 198B.095(1), EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.090(1)(a) requires the office to create and administer a building inspector's certification program which is designed to ensure uniform statewide enforcement of applicable state building codes. KRS 198B.050(5) requires the board to promulgate administrative regulations necessary to implement the Uniform State Building Code. KRS 198B.095(1) authorizes the board to promulgate an administrative regulation to establish a building inspector training program. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the testing, training, and continuing education requirements for qualifying persons to become inspectors for the enforcement of the Kentucky Building Code, and to identify the level of their responsibilities for this enforcement.

Section 1. Definitions. (1) "Certified building inspector" is defined by KRS 198B.010(6).

(2) "Enrolled" means an applicant has complied with the requirements established in Section 4(1) of this administrative regulation.

(3) "ICC test module" means a test module, from the International Code Council, that is used to meet the module testing requirements established in Section 5 of this administrative regulation.

(4) "Limited certificate" means a document establishing that a person:

(a) Has passed the test for competency in one (1) or more NCPCCI or ICC test modules; and

(b) Is qualified to engage in the type of limited inspections listed on the certificate which represents the level of competency for which the person was tested.

(5) "NCPCCI test module" means a test module, from the National Certification Program for Construction Code Inspectors, developed by the national code enforcement organizations for the purpose of providing nationally-recognized evidence of competency and professionalism in construction code enforcement and used to meet the module testing requirements established in Section 5 of this administrative regulation.

(6) "Trainee" means a person who is enrolled in the building inspector program of the department, but has not completed the NCPCCI or ICC test modules necessary to be a Kentucky certified building inspector.

Section 2. Inspection Operations. (1) Each governmental entity engaged in a building inspection program shall have, in responsible charge of all construction document approvals, inspections and issuance of certificates of occupancy, at least one (1) Kentucky certified building inspector with the level of credentials required for the buildings covered by the program.

(2) A trainee may be utilized in a building inspection program if the trainee operates under the general supervision of a Kentucky certified building inspector.

(a) Trainees shall not issue permits, construction document approval letters, inspection compliance letters, or certificates of occupancy.

(b) A trainee holding a current limited certificate shall exercise only the duties authorized by that certificate.

(c) A limited certificate shall not be available to persons who apply after March 22, 2001.

Section 3. Training and Testing Requirements to Become Certified. A candidate seeking certification shall comply with the provisions of this section.

(1) A candidate seeking to become certified pursuant to this administrative regulation and all trainees shall be required to attend orientation training, provided or approved by the department. The training sessions shall be given quarterly.

(2) Continuing education.

(a) Continuing education programs shall be conducted by:

1. The department;

2. The Code Administrators Association of Kentucky; or

3. A provider that is approved by the department pursuant to paragraph (d) of this subsection.

(b) The board may fund a continuing education program through the Building Inspectors' Financial Incentive Training Program Fund.

(c) A candidate seeking certification shall:

1. Complete a minimum of twelve (12) hours of continuing education training annually; and

2. Submit verification of completion on either:

a. Form DHBC BC/CE-1; or

b. A certificate of completion provided by a pre-approved training provider.

(d)1. A provider shall submit a written request for approval of the educational program to the department no less than thirty (30) days prior to the date the educational program will be offered.

2. The program shall be recognized as approved training for the Kentucky Certified Building Inspector Program if the program:

a. Relates to the general business skills or the technical skills required of a certified inspector;

b. Contains sufficient educational content to improve the quality of a certified inspector's performance; and

c. Includes a course evaluation.

3. The written request shall include the following:

a. The total number of continuing education hours;

b. Course syllabus;

c. A detailed outline of the contents of the course;

d. Name and address of the vendor;

e. Name, address, and qualifications of the instructor;

f. Program agenda with written description of class material which clearly identifies that the educational content relates to the general business skills or the technical skills required of a certified inspector which would improve the quality of the certified inspector's performance; and

g. Location and keeper of class attendance verification list, which shall be available for at least twelve (12) months after completion of the educational program.

(3) The commissioner may waive the time requirements established in this administrative regulation for hardships shown or if circumstances warrant a waiver due to changes in testing procedures, standards or dates.

Section 4. Application for Training and Certification. (1) To become a trainee or a candidate for certification, a person shall submit:

(a) A completed form DHBC BC/CP-1, Initial Application Form;

(b) A fifty (50) dollar application fee; and

(c) Written proof that the applicant has met the requirements established in subsection (2) of this section.

(2) An applicant shall have:

(a)1. Graduated from high school or earned a general education diploma; and

2.a. Three (3) years experience in a responsible, directly-related construction position, such as a foreman, which required the ability to effectively read and interpret building plans and specifications; or

b. Three (3) years experience in an architect's or engineer's office performing building design or drafting duties;

(b) Graduated from a college or university with an associate degree in a design, building technology or construction-related subject; or

(c) Graduated from a college or university with a bachelor's degree in architecture, engineering, fire science, or building technology.

(3) A certified inspector or trainee, including an inspector holding a limited certificate, shall pay an annual renewal fee of fifty (50) dollars not later than the last day of the certified inspector or trainee's birth month in order to maintain certification and to continue to be registered. A late fee of fifty (50) dollars shall be assessed if renewal is not received by the last day of the certified inspector or trainee's birth month. If a certified inspector or trainee fails to renew ninety (90) days after the last day of that person's birth month, certification shall terminate[~~an additional fifty (50) dollar fee shall be accrued~~].

(4) A reinstatement fee for any terminated certification shall be equal to the renewal fee and shall be paid in addition to the renewal fee. A terminated certification may be reinstated if application is made within three (3) years from the date of termination and shall not require examination for reinstatement.

(5) A person shall not engage in any inspection activities for the enforcement of the Kentucky Building Code, or the One- and Two-Family Dwelling Code as adopted within the Kentucky Building Code for application to one (1) and two (2) family dwellings and townhouses, unless that person is currently enrolled with the department and has otherwise complied with the requirements of this administrative regulation.

Section 5. Inactive License Certification. (1) A certified inspector or an inspector holding a limited certificate may request that the certification be placed in an inactive status and shall:

(a) Not perform any inspections while the certification is inactive;

(b) Pay an inactive fee of one-half (1/2) of the renewal fee annually on or before the last day of the certified inspector's birth month; and

(c) Not be required to obtain yearly continuing education during the inactive status. Within twelve (12) months prior to a request for re-activation, twelve (12) hours of continuing education shall be obtained.

(2) Upon a request to reactivate an inactive certification, an inspector shall pay one-half (1/2) the fee for an active certification.

Section 6. Certification Requirements, Responsibilities and Jurisdiction for Inspectors. (1) One (1) and two (2) family dwelling inspector.

(a) A person shall be classified as a one (1) and two (2) family dwelling inspector if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code, by passing the following:

a. NCPCCI test modules:

(i) Test 1A Building One- and Two-Family Dwelling; and

(ii) Test 4A Mechanical One- and Two-Family Dwelling; or

b. ICC test modules:

(i) Test B1 Residential Building Inspector; and

(ii) Test M1 Residential Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A one (1) and two (2) family dwelling inspector shall be qualified to perform all functions related to the enforcement of the One- and Two-Family Dwelling Code, including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy for the construction of one (1) and two (2) family dwellings and townhouses.

(2) Building inspector, level I.

(a) A person shall be classified as a building inspector, level I, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

(i) Test 1A Building One- and Two-Family Dwelling;

(ii) Test 4A Mechanical One- and Two-Family Dwelling;

(iii) Test 1B Building General;

(iv) Test 3B Fire Protection General; and

b. ICC test modules:

(i) Test B1 Residential Building Inspector;

(ii) Test B2 Commercial Building Inspector;

(iii) Test MI Residential Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level I, shall be qualified to perform all functions related to the enforcement of the Kentucky Building Code, including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy for all buildings of the occupancy type and size assigned to local governments by KRS 198B.060(2).

(3) Building inspector, level II.

(a) A person shall be classified as a building inspector, level II, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

(i) Test 1A Building One- and Two-Family Dwelling;

(ii) Test 4A Mechanical One- and Two-Family Dwelling;

(iii) Test 1B Building General;

(iv) Test 3B Fire Protection General; and

(v) Test 4B Mechanical General; or

b. ICC test modules:

(i) Test B1 Residential Building Inspector;

(ii) Test B2 Commercial Building Inspector;

(iii) Test M1 Residential Mechanical Inspector; and

(iv) Test M2 Commercial Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level II, shall be qualified to perform functions related to the enforcement of the Kentucky Building Code for all buildings of the occupancy type and size assigned to local government under KRS 198B.060(2) including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy.

(c) A building inspector, level II, shall be qualified to conduct on-site inspections of all buildings which were assigned to the department pursuant to KRS 198B.060(4).

(4) Building inspector, level III.

(a) A person shall be classified as a building inspector, level III, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code, Mechanical Code and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

(i) Test 1A Building One- and Two-Family Dwelling;

(ii) Test 4A Mechanical One- and Two-Family Dwelling;

(iii) Test 1B Building General;

(iv) Test 3B Fire Protection General;

(v) Test 4B Mechanical General;

(vi) Test 1C Building Plan Review;

(vii) Test 3C Fire Protection Plan Review; and

(viii) Test 4C Mechanical Plan Review; or

b. ICC test modules:

(i) Test B1 Residential Building Inspector;

(ii) Test B2 Commercial Building Inspector;

(iii) Test M1 Residential Mechanical Inspector; and

(iv) Test M3 Mechanical Plans Examiner; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level III, shall be qualified to perform all functions relating to the enforcement of the Kentucky Building Code, including issuing permits, reviewing and approving construction documents conducting, on-site inspections and issuing compliance letters and certificates of occupancy for all buildings, regardless of size or occupancy type. A local inspector shall not be authorized to perform these functions on buildings assigned to the department by KRS 198B.060(4), except by petition to and approval of more inspection responsibility by the department pursuant to 815 KAR 7:110.

(5) Mechanical inspector, one (1) and two (2) family dwellings.

(a) A person shall be classified as a mechanical inspector of one (1) and two (2) family dwellings if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code by passing the:

a. NCPCCI Test 4A Mechanical One- and Two-Family Dwelling test module; or

b. ICC Test M1 Residential Mechanical Inspector test module; and

2. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector of one (1) and two (2) family dwellings shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the One- and Two-Family Dwelling Code including conducting inspections of one (1) and two (2) family dwelling mechanical installations for compliance.

(6) Mechanical inspector general (other than one (1) and two (2) family dwellings).

(a) A person shall be classified as a mechanical inspector general if the person has:

1. Been tested for competency under the Mechanical Code, by passing:

a. NCPCCI Test 4B Mechanical General test module; or

b. ICC Test M2 Commercial Mechanical Inspector test module; and

2. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector general shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(7) Mechanical inspector and plan reviewer.

(a) A person shall be classified as a mechanical inspector and plan reviewer if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the Mechanical Code, by passing the following:

a. NCPCCI test modules:

(i) Test 4A Mechanical One- and Two-Family Dwelling;

(ii) Test 4B Mechanical General; and

(iii) Test 4C Mechanical Plan Review; or

b. ICC test modules:

(i) Test M1 Residential Mechanical Inspector; and

(ii) Test M3 Mechanical Plans Examiner; and

2. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector and plan reviewer shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the One- and Two-Family Dwelling Code and the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(8) Trainees and limited certificates.

(a) A person making inspections pursuant to a limited certificate shall be supervised by a Kentucky certified building inspector with a level I certification or higher.

(b) A person making inspections as a trainee without a certificate shall be supervised by a person with a level of certification equal to or higher than that which the trainee is pursuing.

(c) A trainee or a person with a limited certificate shall not issue permits, construction document approval letters, compliance letters or certificates of occupancy, or make any official or final determinations relating to the Kentucky Building Code.

(9) A person making inspections as authorized by this administrative regulation shall not overrule, supplant or order any corrections or alterations which conflict with the approved construction documents. If an inspector believes that the construction documents are wrong or that the construction is in violation of the code, the inspector shall immediately refer the matter to the certified building inspector responsible for approval of the construction documents for resolution.

(10) Upon application by a testing agency, a national code group, or by an applicant for certification, the department may recognize other examinations as equivalent to the listed NCPCCI or ICC examinations. The person or group submitting the examination shall demonstrate that the examinations cover the same codes and require the same level of knowledge as the NCPCCI or ICC examinations.

Section 7.[~~6.~~] Suspension and Revocation of Certification. (1) Formal written complaints concerning an inspector shall be submitted to the Department of Housing, Buildings, and Construction for review and appropriate action.

(2) Action shall not be taken against a building inspector governed under this administrative regulation until a hearing has been held in accordance with KRS Chapter 13B and the commissioner determines that the inspector is:

(a) Not enforcing the Kentucky Building Code;
(b) Improperly enforcing the code; or
(c) Violating his or her responsibilities as an inspector.

Section 8.[~~7.~~] Grandfather Clause. (1) A person who was certified as a building inspector, level I, II or III, or who held a limited certificate on December 15, 1997 shall:

(a) Not be required to take additional test modules to renew the certification, if the person has maintained continuous certification since December 15, 1997; and

(b) Complete the continuing education requirements as established in Section 3 of this administrative regulation prior to renewal of the certificate.

(2) A person who was certified on March 22, 2001, but who seeks to achieve a higher level of certification, shall comply with the testing modules required by this administrative regulation.

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

(a) Form DHBC-BC/CE 1, Continuing Education Verification Form, October 2009; and

(b) Form DHBC-BC/CP 1, Initial Application Form, October 2009.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Chairman
ROBERT VANCE, Secretary

APPROVED BY AGENCY: April 7, 2010

FILED WITH LRC: April 13, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2010 at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2010 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the standards and procedures for the Kentucky Certified Building Inspector program.

(b) The necessity of this administrative regulation: KRS 198B.090 (1)(a) requires the Office to create and administer a building inspector certification program designed to ensure uniform statewide enforcement of the state building codes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides detailed procedures for the building inspection certification program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Currently this regulation sets the standards for building inspectors.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides for a late fee of fifty (50) dollars for certification renewals; implements a termination status and reinstatement process for inspector certifications including a reinstatement fee equal to the renewal fee; and implements an inactive status with a fee equal to one half of the established renewal fee for building inspector certification.

(b) The necessity of the amendment to this administrative regulation: The amendment establishes an inactive certification status and reinstatement process for inspector certifications.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.090 (1) (a) requires the Office to establish procedures for certification of building inspectors.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides procedures for reinstatement of a terminated building inspector certification and allows a certified building inspector to place their certification into inactive status without penalty or re-testing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulatory amendment will apply to individuals who are certified as a building inspector by the Department of Housing, Buildings and Construction.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified building inspectors will be required to follow established procedures relating to certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative regulation establishes the fee schedule for placing a certification in "inactive" status, for late renewal, and for reinstatement following termination of certification for non-renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment establishes procedures for reinstatement of a terminated certification for non-payment within three (3) years without re-testing, as well as providing the opportunity for inspectors to place certification in "inactive status" should the inspector have circumstances during which he or she will not be working as an inspector, but wish to retain certification in the state.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None

(a) Initially: No cost to implement

(b) On a continuing basis: No cost to implement

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The certified building inspector program is funded by certification and renewal fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No currently established fees are to be raised nor additional funding required to implement this regulatory amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: A late fee is established in this amendment to offset additional administrative costs for processing certification renewals not timely renewed, as well as an "inactive status" fee which is less than renewal fees currently paid by inspectors to maintain their licenses whether in use or not.

(9) TIERING: Is tiering applied? Tiering is inapplicable to this administrative regulation amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, the Division of Building Code Enforcement, and local entities that employ certified building inspectors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.095.

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 is minimal anticipated affect upon expenditures and revenues of the Department or local entities as a result of this administrative regulation 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. Undetermined.

(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. Undetermined.

(c) How much will it cost to administer this program for the first year? There are minimal anticipated additional costs to the agency to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There are minimal anticipated additional costs to the agency 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 (+/-): Undetermined. Although a late fee is being established, there is no way to accurately project the number of certificate holders who will be subject to the late fee for certification renewals. Similarly, the agency has no way to accurately project or predict the number of certified inspectors who may choose to place certification into "inactive status" (which would DECREASE revenues from the full renewal fee to maintain certification without the proposed amendment).

Expenditures (+/-): Neutral.

Other Explanation: N/A

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(27), 216B.040(2)(a)2a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2010-2012 State Health Plan[~~2009 Update to the 2007-2009 State Health Plan as amended June 9, 2009~~] shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(28)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The 2010-2012 State Health Plan[~~2009 Update to the 2007-2009 State Health Plan as amended June 9, 2009~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Certificate of Need, 275 East Main Street, fourth floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: April 15, 2010

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

PUBLIC HEARING AND COMMENTS:

A public hearing on this administrative regulation shall, if requested, be held on May 21, 2010, at 9 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Contact Person: Carrie Banahan or Shane P. O'Donley, (502) 564-9589

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040.

(b) The necessity of this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2010 - 2012 State Health Plan by reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation of the State Health Plan is required by KRS 216B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation of the State Health Plan is required by KRS 216B.

(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 update the 2010 - 2012 State Health Plan.

(b) The necessity of the amendment to this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially. The last triennial State Health Plan was prepared in 2009, so the next triennial plan is being prepared for 2010-2012.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(27) that the State Health Plan be updated on an annual basis.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated State Health Plan for purposes of certificate of need review.

(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 health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or devel-

op community health care facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The modifications will apply to potential Certificate of Need applicants for Diagnostic and Therapeutic Equipment and Procedures and Magnetic Resonance Imaging Equipment.

(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 entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The criteria for applicants proposing to establish fixed site diagnostic cardiac catheterization has been made less stringent, applicants may now propose to expand their existing diagnostic cardiac catheterization service to also provide primary (emergency) angioplasty services on a two (2) year trial basis, and applicants may propose to provide comprehensive (diagnostic and therapeutic) cardiac catheterization services without a comprehensive cardiac surgical program (including open-heart surgery) within the facility. These changes may increase access to cardiac catheterization services to areas of the state that do not currently have these services.

(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 is necessary since there is no cost to implementing this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2010 – 2012 State Health Plan by reference.

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? No impact to 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? No revenues will be generated to state or local government.

(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 (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 6:020. Certificate of need application fee schedule.

RELATES TO: KRS 216B.040(3)(c)

STATUTORY AUTHORITY: KRS 216B.040(3)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(c) authorizes the Cabinet for Health and Family Services to establish, by administrative regulation, reasonable application fees for certificates of need. This administrative regulation establishes the fee schedule for certificate of need applications.

Section 1. (1) Certificate of need applications which are submitted by an existing licensed healthcare facility or service that has met the emergency circumstances provision as provided in 900 KAR 6:080 and has received notice from the Office of Health Policy that an emergency exists, shall be assessed an application fee of $100.

(2) Certificate of need applications not proposing a capital expenditure or proposing a capital expenditure of up to $200,000 shall be assessed an application fee of $1,000.

(3)[~~(2)~~] Certificate of need applications which propose a capital expenditure greater than $200,000 up to $5,000,000 shall be assessed an application fee of five-tenths (.5) percent of the capital expenditure and shall be computed to the nearest dollar.

(4)[~~(3)~~] Certificate of need applications which propose a capital expenditure greater than $5,000,000 shall be assessed an application fee of $25,000.

(5) Certificate of need applications which propose to expand their existing diagnostic cardiac catheterization service to also provide primary (i.e. emergency) Percutaneous Coronary Intervention (PCI) services on a two (2) year trial basis or to provide comprehensive (diagnostic and therapeutic) cardiac catheterization services on a two (2) year trial basis shall be assessed an additional application fee of $10,000.

Section 2. Application fees shall be submitted with the application. Applications shall not be deemed complete until the application fee has been paid. Application fees shall be refunded only if notice of withdrawal of the application is received by the cabinet within five (5) working days of the date the application is received by the Cabinet for Health and Family Services. Application fees submitted pursuant to Section 1(5) of this administrative regulation shall be refunded if the certificate of need application is denied and all administrative remedies provided for in KRS 216B.085 are exhausted.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: April 15, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2010, at 9 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Shane O'Donley, 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for certificate of need applications by the cabinet pursuant to KRS 216B.040(3)(c).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.040(3)(c).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content KRS 216B.040(3)(c) by establishing the fees entities must pay to submit a certificate of need application to the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.040(3)(c) by establishing the fee schedule necessary for entities to submit certificate of need applications.

(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 amending this administrative regulation entities wishing to file a certificate of need that meets the emergency circumstances provision provided in 900 KAR 6:080 shall be assessed an application fee of $100 rather than $1,000. Entities that wish to file a certificate of need to establish an adult therapeutic cardiac catheterization service shall be assessed an additional application fee of $10,000. However, the $10,000 fee shall be refunded if the certificate of need application is denied and all administrative remedies are exhausted.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to decrease the application fee for emergency circumstance applications and to establish a fee for establishment of therapeutic cardiac catheterization service applications.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing a fee schedule for entities wishing to file a certificate of need application.

(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 providing a fee schedule for entities wishing to file a certificate of need application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a certificate of need application using the emergency circumstance provision or an application to establish an adult therapeutic cardiac catheterization service. Between January 1, 2009 and December 31, 2009, less than 10 entities filed a certificate of need application using the emergency circumstance provision. We anticipate that less than 10 entities will file an application to establish an adult therapeutic cardiac catheterization service.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will submit an application fee with their application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For those entities filing an application using the emergency provisions, the cost will be reduced from $1,000 to $100. For those entities filing an application to establish an adult therapeutic cardiac catheterization service there shall be an additional fee of $10,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) Those entities filing an application using the emergency provision shall see a decrease in the amount of their fee. Entities, not previously able to do so, may now file an application to establish an adult therapeutic cardiac catheterization services with an additional fee submission.

(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: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget and an increase in the amount of application fees received on behalf of CON applications to expand an existing diagnostic cardiac catheterization program to include adult therapeutic cardiac catheterization services will be used to select and reimburse an outside expert consultant who shall be tasked with reviewing and verifying the quality of the applicant's cardiac catheterization 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: This regulation amendment will provide for an increase in CON application fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an additional $10,000 CON application fee for entities wishing to expand an existing diagnostic cardiac catheterization program to include adult therapeutic cardiac catheterization services and reduces the CON application fee for emergency circumstances from $1,000 to $100.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(3)(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.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this amendment on a continuing basis.

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

Revenues (+/-): Less than $100,000

Expenditures (+/-): Less than $100,000

Other Explanation: Revenues are estimated based on less than 10 applications per year. Fees will be used to offset expenditures.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 6:060. Timetable for submission of certificate of need applications.

RELATES TO: KRS 216B.010, 216B.062, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1, 216B.062(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.062(1) and (2) require the cabinet to promulgate administrative regulations to establish timetables and batching groups for applications for certificates of need. This administrative regulation establishes the timetable for submission of application requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1 Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(3) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(4) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer nursing home beds.

(5) "Nonsubstantive review" is defined by KRS 216B.015(17).

(6) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(7) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

Section 2. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and 900 KAR 6:075 shall be as established in this subsection:

(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, open heart surgery, positron emission tomography equipment, and new technological developments shall be provided on the third Thursday of the following months:

1. January; and

2. July.

(b) Public notice for residential hospice facilities, hospice agencies, and home health agencies shall be provided on the third Thursday of the following months:

1. February; and

2. August.

(c) Public notice for ground ambulance providers, private duty nursing services, mobile services, and rehabilitation agencies shall be provided on the third Thursday of the following months:

1. March; and

2. September.

(d) Public notice for day health care programs, prescribed pediatric extended care facilities, and personal care beds shall be provided on the third Thursday of the following months:

1. April; and

2. October.

(e) Public notice for long-term care beds, acute care hospitals including all other State Health Plan covered services to be provided within the proposed acute care hospital, cardiac catheterization, acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency beds, limited services clinics, ambulatory care centers, freestanding ambulatory surgical centers, outpatient health care centers, and birthing centers shall be provided on the third Thursday of the following months:

1. May; and

2. November.

(f) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities and psychiatric residential treatment facilities (PRTF) shall be provided on the third Thursday of the following months:

1. June; and

2. December.

(g) A proposal not included in paragraphs (a) through (f) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.

(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) calendar days prior to the date of the desired public notice.

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: April 15, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2010, at 9 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Shane O'Donley, 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cabinet's timetable for submission of certificate of need applications. The amendment to this administrative regulation will recognize the creation of an additional licensure category pursuant to 902 KAR 20:400 titled Limited Services Clinics.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.010, 216B.062, and 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.062, and 216B.990 by establishing the timetable for submission of certificate of need applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.010, 216B.062, and 216B.990 by establishing the timetables for submission of certificate of need applications.

(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 assign Certificate of Need applications to establish limited services clinics to a specific CON application batching cycle.

(b) The necessity of the amendment to this administrative regulation: The Office of the Inspector General filed an administrative regulation which creates a new licensure category. Since this category of service is not exempt by statute from CON requirements, the Office of Health Policy must assign this facility category to an appropriate batching cycle schedule. This amendment accomplishes that requirement.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 216B.062, applications for certificates of need shall be submitted according to timetables established by the cabinet by promulgation of administrative regulation, pursuant to the provisions of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: Promulgation of this amended administrative regulation under KRS Chapter 13A shall establish an appropriate batching cycle to assure that applications for limited services clinics will be eligible for consideration at set intervals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a certificate of need application to establish a limited services clinic.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the timetables set forth in the administrative regulation are currently established and operational, no new action will be required for regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the timetables set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide potential health care providers with a mechanism to establish limited services clinics in compliance with KRS Chapter 216B.

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

(a) Initially: No additional costs will be incurred to implement this regulation as we already utilize these timetables as part of our normal operations.

(b) On a continuing basis: No additional costs will be incurred to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the timetables are already used as part of our normal operations so no additional funding will be required.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.062, 216B.990.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, APRIL 15, 2010

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

704 KAR 3:540. Uniform academic course codes.

RELATES TO: KRS 156.160, 156.070
STATUTORY AUTHORITY: 156.070, 156.160
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 gives the Kentucky Board of Education the management and control of the common schools. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations for the courses of study that are administered in the common schools. This administrative regulation establishes a uniform system of coding academic courses in schools and districts through the student information system. A uniform course code is required to create accurate data regarding courses offered that is utilized by schools, districts, the Department of Education, the Educational Professional Standards Board and the Office of Education Accountability.

Section 1. Local districts and schools shall use uniform academic course codes to classify all courses offered in each school when reporting to the Kentucky Department of Education. Reporting to the Kentucky Department of Education shall include the listing and linking of uniform academic courses when the listing of academic courses is required. The uniform academic course codes are listed and described in "The Kentucky Uniform Academic Course Code list".

Section 2. The linking of local district and school codes to the uniform academic course codes shall be performed by district and school staff using the student information system.

Section 3. The Kentucky Department of Education shall annually audit the use of uniform academic course codes by districts and schools.

Section 4. Incorporation by Reference. (1) "Kentucky Uniform Academic Course Code list", April 2010, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Teaching and Learning, 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

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

TERRY HOLLIDAY, Ph.D., Commissioner
JOE BROTHERS, Chairperson
APPROVED BY AGENCY: April 15, 2010
FILED WITH LRC: April 15, 2010 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 26, 2010 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five 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 June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, (fax) 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown
(1) Provide a brief summary of: Since 2005, the Kentucky Department of Education (KDE) has requested that all districts and schools complete a process of linking course codes in their master schedules to standard course codes from the Kentucky Valid Course Code List. Districts and schools were permitted to maintain the names of courses they currently have in their master schedules as long as they linked those courses to a standard course code provided by the KDE. The KDE provides a short description of that course to accompany the course code. In the Kentucky Valid Course Code List, the Education Professional Standards Board (EPSB) also provides a list of teacher certifications that are necessary to teach the course. Teachers teaching a course linked to a course code for which they are not certified are reflected in the LEAD report generated by EPSB.
(a) What this administrative regulation does: Requires all districts and schools complete a process of linking course codes in their master schedules to standard course codes from the Kentucky Uniform Academic Course Codes.
(b) The necessity of this administrative regulation: The use by districts and schools of the uniform academic course code is a step required to make it possible in the future to link student, teacher, principal, superintendent and preparation program effectiveness together. This is also a step in the right direction to ensure equal opportunity to learn for students across the Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation aligns with 156.070 because the KBE needs to manage common schools and 704 KAR 3:540 will allow the KBE to have a better understanding of the learning experiences students are having. KRS 156.160 allows the KBE to promulgate regulations such as this one.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will give the KBE, and in turn, the legislature a clearer picture of the learning experiences students are having and will allow for the linking of student performance to teacher and school performance so that the KBE can make policy decisions based on the data collected.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not an amendment.
(a) How the amendment will change this existing administrative regulation: Not an amendment.
(b) The necessity of the amendment to this administrative regulation: Not an amendment.
(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.
(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky that have schools.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed regulation will impact identified schools and districts by providing the detail necessary to carry out their roles and responsibilities in KRS 160.346.
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Schools will look at their current course catalog and link their local courses to the Kentucky Uniform Academic Course Codes. Many districts already completed this

process when it was encouraged and not required. Those districts will only need to make a few minor changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the school districts or the Commissioner of Education other than minimal administrative costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools and districts will have an ability to have quality data around the learning experiences of their students in order to inform instructional improvements.

(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:

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

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

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

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 156.070, 156.160

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional dollars will be expended on 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? None

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

810 KAR 1:037. Licensing of racing associations.

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.320, EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.300 authorizes the Kentucky Horse Racing Commission to issue licenses to conduct race meetings. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the Kentucky Horse Racing Authority to the commission. This administrative regulation establishes the licensing application procedures and requirements for conducting horse racing meetings in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

(2) "Principals" is defined by KRS 230.210(17).

(3) "Publicly traded corporation" means a corporation that has voting securities registered under Section 12 of the Securities and Exchange Act of 1934 (1934 Act), or issues securities subject to Section 15(d) of the 1934 Act, or has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, or is required to file under the 1934 Act.

(4) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

Section 2. License Applications for Associations. (1) New license applications. A person or legal entity desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).

(2) Renewal applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300.

(3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering".

(4) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any information required, the applicant shall fully explain and document to the satisfaction of the commission its inability to provide the information, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.300(9), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants.

(a) As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of $10,000.

(b) Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal or rejection of the initial license application or within twenty (20) days of the granting of the license.

(c) To the extent additional costs are incurred, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of the request.

(d) Failure to submit an additional requested payment shall result in suspension of the investigation or suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for an initial license shall also pay a licensing fee. The applicant shall submit, along with the license application, a cashier's check or certified check payable to the commission in the amount of $5,000. This fee shall be nonrefundable.

(3) Renewal applications. The commission shall not charge costs or fees for the renewal of racing association licenses.

Section 4. Licensing Criteria. (1) The commission shall issue a license if the commission determines that, on the basis of all the facts before it:

(a) The applicant meets all of the requirements under KRS Chapter 230, including KRS 230.280 and 230.300;

(b) The applicant meets all of the requirements of this administrative regulation;

(c) The applicant is qualified and financially capable to operate a race track;

(d) Racing meetings at the race track will be operated in accordance with KRS Chapter 230 and 810 KAR Chapter 1;

(e) Racing will be conducted by the applicant in accordance with the highest standards and the greatest level of integrity; and

(f) The issuance of a license will ensure the protection of the public interest.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:

(a) The integrity of the applicant and its principals, including:

1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes.

(b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;

(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;

(d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;

(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;

(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;

(g) The management ability of the applicant and its principals

(h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations.

(i) The efforts of the applicant to promote, develop, and improve the horse racing industry in Kentucky.

(j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:

1. Employment created, purchases of goods and services, public and private investment, and taxes generated;

2. Ecological and environmental impact;

3. Social impact; and

4. Cost of public improvements;

(k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and

(l) The effects of the location of the track, including the following:

1. Number, nature, and relative location of other licensees; and

2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing meetings and race dates to initial and renewal license applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks. Factors to be considered shall include the following:

(1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;

(2) The effects that various types of pari-mutuel racing have upon one another;

(3) The quality of horse racing provided at other racetracks;

(4) Dates traditionally awarded racetracks in the past;

(5) The past performance of the licensee;

(6) Whether the licensee has complied with KRS Chapter 230 and 810 KAR Chapter 1;

(7) Whether the assignment of racing dates will maximize revenues to the state;

(8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;

(9) The projected stability of the racing dates to be awarded; and

(10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. Oral Presentation by Applicant. (1) An applicant for a license may make an oral presentation of its application to the commission prior to the ruling on the application.

(a) The presentation shall be made by an applicant during a meeting of the commission.

(b) The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) The commission may require an applicant to clarify or otherwise respond to questions concerning the application as a condition to the issuance of a license.

(3) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 7. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue a license, including:

(a) Copies of any documents used by the applicant in preparing the application; and

(b) Contracts between the applicant and third parties related to operations.

(2) The request may be made before or after the oral presentation.

Section 8. Transfers of Licenses. (1) A license issued under KRS 230.300 and this administrative regulation is neither transferable nor assignable and is only applicable to the location for which the license is issued.

(2) A substantial change in ownership in a licensee shall result in termination of the licensee unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Kentucky Horse Racing Commission Change of Control Form." Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership shall be based.

(4) For purposes of subsection (3), notice is not required for:

(a) A nominal change in ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in an association, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who shall hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless such transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.

(5) Any attempt to effect a substantial change in ownership under this section not in writing shall be considered void by the commission.

Section 9. Material Modification, Expansion or Reduction of Proposed or Existing Facility. A new applicant or association with an existing facility shall not materially alter the grounds or facilities

after a license has been issued for that facility (whether a final or conditional license in accordance with KRS 230.290) without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Delay in Completion of Racing Facility. (1) Except as provided by subsection (3) of this section, a licensee may be subject to a late fee not to exceed $15,000 a day for every day the licensee fails to conduct racing after the commencement date specified in the license.

(2) The amount of the fee shall be determined based on the economic impact caused by the licensee's failure to perform.

(3) The late fee required by subsection (1) of this section shall not be imposed for any particular day if the licensee can prove to the satisfaction of the commission that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors, such as:

(a) Acts of God or enemies of the United States;

(b) Acts of government in either its sovereign or contractual capacity;

(c) Fires;

(d) Floods;

(e) Epidemics;

(f) Quarantine restrictions;

(g) Strikes;

(h) Freight embargoes; and

(i) Unusually severe weather.

(3) If the cause of delay is the default of a contractor or subcontractor, and if the licensee proves to the satisfaction of the commission that the default arose out of causes beyond the control of the licensee, its contractors, and subcontractors, then the late fee shall not be due unless the supplies or services to be furnished by the contractor or subcontractor were obtainable from other sources in sufficient time for the licensee to meet the completion date.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering Form", KHRC 37-01, 3/10; and

(b) "Kentucky Horse Racing Commission Change of Control Form", KHRC 37-02, 3/10.

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

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2010 at 1 p.m., at the Kentucky Horse Racing Commission, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by May 17, 2010, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing application procedures and requirements for conducting horse racing meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The regulation is necessary to provide association licensing standards, requirements, and procedures for conducting horse racing meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation describes the process, fees, procedures, and criteria for granting/denying association applications as authorized by KRS 230.300. Jurisdiction and authority to promulgate such regulation is set forth in KRS 230.215(2) and 230.260(1) and (9) governing the conditions of horse racing and the criteria for licensing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes procedures, fees, requirements, and criteria when granting or denying an association's initial/renewal license application.

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

(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: Racing associations are affected by this regulation (new/existing). Currently there are eight (8) associations 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 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 associations will be required to complete the application form and disclosure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The associations should already have the information required to comply with the regulation and complete the application form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Renewals will be streamlined, and a uniform application will allow associations to submit the same application.

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

(a) Initially: There is no anticipated increase in cost to the Commission.

(b) On a continuing basis: There is no anticipated increase in cost to the commission.

(6) 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 funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees

are established for new applicants. New associations will pay an increased application fee and be the subject of additional questions due to additional information requirements and staff review.

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning association application licensing apply equally to all racing associations conducting horse racing meetings in the Commonwealth of 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? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.260, 230.280, and 230.300.

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 estimated change in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? N/C

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

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Authority
(New Administrative Regulation)

810 KAR 1:100. Frivolous appeals.

RELATES TO: KRS 230.215, 230.225(7), 230.310(2), 230.320, 230.330, EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.320(5), EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing Authority with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission. KRS 230.320(1) allows the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license is denied, suspended, or revoked or who is assessed and administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5) allows the commission to determine that certain appeals are frivolous and requires it to, by administrative regulation, prescribe the conditions or factors that would lead to such a determination. This emergency administrative regulation defines the term "frivolous" as it pertains to KRS 230.320(5).

Section 1. Frivolous Appeals. The commission may determine that an appeal is a frivolous appeal. An appeal shall be presumed to be frivolous if:

(1) The applicant applies for an appeal to the commission but fails, without good cause, to appear at the KRS Chapter 13B prehearing, if one is scheduled, or the KRS Chapter 13B hearing before the commission's hearing officer;

(2) 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; or

(3) The appeal is totally lacking in merit such that that it appears to have been taken in bad faith.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2010 at 11 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by May 17, 2010, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the term "frivolous" as it pertains to administrative appeals filed by licensees or other persons participating in Kentucky horse racing.

(b) The necessity of this administrative regulation: The regulation is necessary to define the circumstances under which an appeal will be deemed to be frivolous so that the Kentucky Horse Racing Commission may exercise the rights granted to it by KRS 230.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

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

(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: Licensees or other persons participating in Kentucky horse racing. There are roughly 17,000 persons licensed by the Kentucky Horse Racing Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated increase in cost to the entities described in question (3), although they will become subject to the payment of the Kentucky Horse Racing Commission's costs in defending and appeal if the appeal is deemed to be frivolous.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The stewards, judges, hearing officers and Commissioners will have more time to deal with the legitimate appeals and, as a result, will be better able to regulate horse racing in Kentucky.

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

(a) Initially: There is no anticipated increase in cost to the commission.

(b) On a continuing basis: There is no anticipated increase in cost to the commission.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning frivolous appeals apply equally to all licensees or persons participating in horse racing in the Commonwealth of 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? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.320(1), (2), (3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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: The regulation will allow the Kentucky Horse Racing Commission to recoup costs incurred in defending administrative appeals that are deemed to be frivolous.

PUBLIC PROTECTION CABINET
KENTUCKY HORSE RACING COMMISSION
(New Administrative Regulation)

811 KAR 1:037. Licensing of racing associations.

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.320, EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.300 authorizes the Kentucky Horse Racing Commission to issue licenses to conduct race meetings. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the Kentucky Horse Racing Authority to the commission. This administrative regulation establishes the licensing application procedures and requirements for conducting horse racing meetings in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

(2) "Principals" is defined by KRS 230.210(17).

(3) "Publicly traded corporation" means a corporation that has voting securities registered under Section 12 of the Securities and Exchange Act of 1934 (1934 Act), or issues securities subject to Section 15(d) of the 1934 Act, or has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, or is required to file under the 1934 Act.

(4) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

Section 2. License Applications for Associations. (1) New license applications. A person or legal entity desiring to conduct standardbred racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).

(2) Renewal applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300.

(3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering".

(4) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any information required, the applicant shall fully explain and document to the satisfaction of the commission its inability to provide the information, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.300(9), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants.

(a) As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of $10,000.

(b) Any portion of the payment not required to complete the

investigation shall be refunded to the applicant within twenty (20) days of the withdrawal or rejection of the initial license application or within twenty (20) days of the granting of the license.

(c) To the extent additional costs are incurred, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of the request.

(d) Failure to submit an additional requested payment shall result in suspension of the investigation or suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for an initial license shall also pay a licensing fee. The applicant shall submit along with the license application a cashier's check or certified check payable to the commission in the amount of $5,000. This fee shall be nonrefundable.

(3) Renewal applications. The commission shall not charge costs or fees for the renewal of racing association licenses.

Section 4. Licensing Criteria. (1) The commission shall issue a license if the commission determines that, on the basis of all the facts before it:

(a) The applicant meets all of the requirements under KRS Chapter 230, including KRS 230.280 and 230.300;

(b) The applicant meets all of the requirements of this administrative regulation;

(c) The applicant is qualified and financially capable to operate a race track;

(d) Racing meetings at the race track will be operated in accordance with KRS Chapter 230 and 810 KAR Chapter 1;

(e) Racing will be conducted by the applicant in accordance with the highest standards and the greatest level of integrity; and

(f) The issuance of a license will ensure the protection of the public interest.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:

(a) The integrity of the applicant and its principals, including:

1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes.

(b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;

(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;

(d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;

(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;

(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;

(g) The management ability of the applicant and its principals

(h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations.

(i) The efforts of the applicant to promote, develop, and improve the horse racing industry in Kentucky.

(j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:

1. Employment created, purchases of goods and services, public and private investment, and taxes generated;

2. Ecological and environmental impact;

3. Social impact; and

4. Cost of public improvements;

(k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and

(l) The effects of the location of the track, including the following:

1. Number, nature, and relative location of other licensees; and

2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing meetings and race dates to initial and renewal license applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks. Factors to be considered shall include the following:

(1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;

(2) The effects that various types of pari-mutuel racing have upon one another;

(3) The quality of horse racing provided at other racetracks;

(4) Dates traditionally awarded racetracks in the past;

(5) The past performance of the licensee;

(6) Whether the licensee has complied with KRS Chapter 230 and 810 KAR Chapter 1;

(7) Whether the assignment of racing dates will maximize revenues to the state;

(8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;

(9) The projected stability of the racing dates to be awarded; and

(10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. Oral Presentation by Applicant. (1) An applicant for a license may make an oral presentation of its application to the commission prior to the ruling on the application.

(a) The presentation shall be made by an applicant during a meeting of the commission.

(b) The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) The commission may require an applicant to clarify or otherwise respond to questions concerning the application as a condition to the issuance of a license.

(3) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 7. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue a license, including:

(a) Copies of any documents used by the applicant in preparing the application; and

(b) Contracts between the applicant and third parties related to operations.

(2) The request may be made before or after the oral presentation.

Section 8. Transfers of Licenses. (1) A license issued under KRS 230.300 and this administrative regulation is neither transferable nor assignable and is only applicable to the location for which the license is issued.

(2) A substantial change in ownership in a licensee shall result in termination of the licensee unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Kentucky Horse Racing Commission Change of Control Form." Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with

the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership shall be based.

(4) For purposes of subsection (3), notice is not required for:

(a) A nominal change in ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in an association, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who shall hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless such transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.

(5) Any attempt to effect a substantial change in ownership under this section not in writing shall be considered void by the commission.

Section 9. Material Modification, Expansion or Reduction of Proposed or Existing Facility. A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility (whether a final or conditional license in accordance with KRS 230.290) without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Delay in Completion of Racing Facility. (1) Except as provided by subsection (3) of this section, a licensee may be subject to a late fee not to exceed $15,000 a day for every day the licensee fails to conduct racing after the commencement date specified in the license.

(2) The amount of the fee shall be determined based on the economic impact caused by the licensee's failure to perform.

(3) The late fee required by subsection (1) of this section shall not be imposed for any particular day if the licensee can prove to the satisfaction of the commission that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors, such as:

(a) Acts of God or enemies of the United States;

(b) Acts of government in either its sovereign or contractual capacity;

(c) Fires;

(d) Floods;

(e) Epidemics;

(f) Quarantine restrictions;

(g) Strikes;

(h) Freight embargoes; and

(i) Unusually severe weather.

(3) If the cause of delay is the default of a contractor or subcontractor, and if the licensee proves to the satisfaction of the commission that the default arose out of causes beyond the control of the licensee, its contractors, and subcontractors, then the late fee shall not be due unless the supplies or services to be furnished by the contractor or subcontractor were obtainable from other sources in sufficient time for the licensee to meet the completion date.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering Form", KHRC 37-01, 3/10; and

(b) "Kentucky Horse Racing Commission Change of Control Form", KHRC 37-02, 3/10.

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

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2010 at 1 p.m., at the Kentucky Horse Racing Commission, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by May 17, 2010, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing application procedures and requirements for conducting horse racing meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The regulation is necessary to provide association licensing standards, requirements, and procedures for conducting horse racing meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation describes the process, fees, procedures, and criteria for granting/denying association applications as authorized by KRS 230.300. Jurisdiction and authority to promulgate such regulation is set forth in KRS 230.215(2) and 230.260(1) and (9) governing the conditions of horse racing and the criteria for licensing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes procedures, fees, requirements, and criteria when granting or denying an association's initial/renewal license application.

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

(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: Racing associations are affected by this regulation (new/existing). Currently there are eight (8) associations 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 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 associations will be required to complete the application form and disclosure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The associations should already have the information

required to comply with the regulation and complete the application form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Renewals will be streamlined, and a uniform application will allow associations to submit the same application.

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

(a) Initially: There is no anticipated increase in cost to the commission.

(b) On a continuing basis: There is no anticipated increase in cost to the commission.

(6) 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 funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established for new applicants. New associations will pay an increased application fee and be the subject of additional questions due to additional information requirements and staff review.

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning association application licensing apply equally to all racing associations conducting horse racing meetings in the Commonwealth of 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? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.260, 230.280, and 230.300.

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 estimated change in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? N/C

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

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Authority
(New Administrative Regulation)

811 KAR 1:230. Frivolous appeals.

RELATES TO: KRS 230.215, 230.225(7), 230.310(2), 230.320, 230.330, EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.320(5), EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing Authority with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission. KRS 230.320(1) allows the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license is denied, suspended, or revoked or who is assessed and administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5) allows the commission to determine that certain appeals are frivolous and requires it to, by administrative regulation, prescribe the conditions or factors that would lead to such a determination. This administrative regulation defines the term "frivolous" as it pertains to KRS 230.320(5).

Section 1. Frivolous appeals. The commission may determine that an appeal is a frivolous appeal. An appeal shall be presumed to be frivolous if:

(1) The applicant applies for an appeal to the commission but fails, without good cause, to appear at the KRS Chapter 13B prehearing, if one is scheduled, or the KRS Chapter 13B hearing before the commission's hearing officer;

(2) 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; or

(3) The appeal is totally lacking in merit such that that it appears to have been taken in bad faith.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2010 at 11 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by May 17, 2010, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the term "frivolous" as it pertains to administrative appeals filed by licensees or other persons participating in Kentucky horse racing.

(b) The necessity of this administrative regulation: The regulation is necessary to define the circumstances under which an appeal will be deemed to be frivolous so that the Kentucky Horse

Racing Commission may exercise the rights granted to it by KRS 230.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

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

(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: Licensees or other persons participating in Kentucky horse racing. There are roughly 17,000 persons licensed by the Kentucky Horse Racing Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated increase in cost to the entities described in question (3), although they will become subject to the payment of the Kentucky Horse Racing Commission's costs in defending and appeal if the appeal is deemed to be frivolous.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The stewards, judges, hearing officers and commissioners will have more time to deal with the legitimate appeals and, as a result, will be better able to regulate horse racing in Kentucky.

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

(a) Initially: There is no anticipated increase in cost to the commission.

(b) On a continuing basis: There is no anticipated increase in cost to the commission.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning frivolous appeals apply equally to all licensees or persons participating in horse racing in the Commonwealth of 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? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.320(1), (2), (3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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: The regulation will allow the Kentucky Horse Racing Commission to recoup costs incurred in defending administrative appeals that are deemed to be frivolous.

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

811 KAR 2:130. Frivolous appeals.

RELATES TO: KRS 230.215, 230.225(7), 230.310(2), 230.320, 230.330, EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.320(5), EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing Authority with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission. KRS 230.320(1) allows the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license is denied, suspended, or revoked or who is assessed and administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5) allows the commission to determine that certain appeals are frivolous and requires it to, by administrative regulation, prescribe the conditions or factors that would lead to such a determination. This emergency administrative regulation defines the term "frivolous" as it pertains to KRS 230.320(5).

Section 1. Frivolous Appeals. The commission may determine that an appeal is a frivolous appeal. An appeal shall be presumed to be frivolous if:

(1) The applicant applies for an appeal to the commission but fails, without good cause, to appear at the KRS Chapter 13B prehearing, if one is scheduled, or the KRS Chapter 13B hearing before the commission's hearing officer;

(2) 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; or

(3) The appeal is totally lacking in merit such that that it appears to have been taken in bad faith.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2010 at 11 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by May 17, 2010, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the term "frivolous" as it pertains to administrative appeals filed by licensees or other persons participating in Kentucky horse racing.

(b) The necessity of this administrative regulation: The regulation is necessary to define the circumstances under which an appeal will be deemed to be frivolous so that the Kentucky Horse Racing Commission may exercise the rights granted to it by KRS 230.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.320 states that the Kentucky Horse Racing Commission shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous. This regulation provides the necessary definition for "frivolous".

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

(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: Licensees or other persons participating in Kentucky horse racing. There are roughly 17,000 persons licensed by the Kentucky Horse Racing Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated increase in cost to the entities described in question (3), although they will become subject to the payment of the Kentucky Horse Racing Commission's costs in defending and appeal if the appeal is deemed to be frivolous.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The stewards, judges, hearing officers and commissioners will have more time to deal with the legitimate appeals and, as a result, will be better able to regulate horse racing in Kentucky.

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

(a) Initially: There is no anticipated increase in cost to the commission.

(b) On a continuing basis: There is no anticipated increase in cost to the commission.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning frivolous appeals apply equally to all licensees or persons participating in horse racing in the Commonwealth of 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? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.320(1), (2), (3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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: The regulation will allow the Kentucky Horse Racing Commission to recoup costs incurred in defending administrative appeals that are deemed to be frivolous.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(New Administrative Regulation)

815 KAR 20:018. State plumbing code committee budget review and responsibility.

RELATES TO: KRS 318.071, 318.136, 318.170, EO 2009-535
STATUTORY AUTHORITY: KRS 318.130, EO 2009-535
NECESSITY, FUNCTION, AND CONFORMITY: The Office of Housing, Buildings, and Construction is directed by KRS 318.130 to adopt and put into effect a State Plumbing Code. Additionally, KRS 318.130 authorizes the office to adopt reasonable rules or regulations, after review by the State Plumbing Code Committee, to administer KRS Chapter 318. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes quarterly reviews of the Division of Plumbing's budget and fee schedule by the State Plumbing Code Committee.

Section 1. Budget Review. (1) The following shall be provided at least quarterly to each member of the State Plumbing Code Committee by the Division of Plumbing:
(a) A current fiscal year detailed financial report consisting of current balances;
(b) A revenue report showing all revenue sources of the Division;
(c) Expenditure summaries showing expenditures including total personnel costs and operating expenses; and
(d) Any transfers made or scheduled, either to or from the Division's trust and agency funds established in KRS 318.136.
(2) The detailed report shall be delivered to each committee member not less than ten (10) business days prior to each quarterly meeting of the State Plumbing Code Committee.

Section 2. If the division's trust fund balance exceeds $500,000:
(1) The State Plumbing Code Committee shall:
(a) Review the Division's staffing;
(b) Review the following fees:
1. Examination;
2. License;
3. Plumbing installation;
4. Medical gas permitting; and
(c) Review the division's current level of service; and
(d) Recommend changes needed to maintain or improve the division's level of service and accurately balance revenues with expenditures.
(2) The division shall prepare for the State Plumbing Code Committee's review:
(a) Staffing report detailing personnel levels, personnel costs and personnel goals;
(b) Fee proposals with projected effects to the division's balances from each fee.

RICHARD MOLONEY, COMMISSIONER
ROBERT D VANCE, SECRETARY
APPROVED BY AGENCY: April 7, 2010
FILED WITH LRC: April 8, 2010 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2010, at 10 am, EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2010 (five working days prior to the hearing) of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:
CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes quarterly reviews of the Division of Plumbing's budget and fee schedule by the State Plumbing Code Committee.
(b) The necessity of this administrative regulation: KRS 318.130 authorizes the office to adopt reasonable rules or regulations, after review by the State Plumbing Code Committee, for the administration of the plumbing program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides for quarterly review of the budget and fee schedule by the State Plumbing Code Committee to carry out the administration of the plumbing program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will implement review of budget and fee schedules on a quarterly basis to assist in the efficient and effective fiscal management of the Division of Plumbing.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.
(d) How the amendment will assist in the effective administration of the statutes: Not applicable.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings, and Construction, the Division of Plumbing, the State Plumbing Code Committee.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The department, division and committee will review the division's budget and fiscal documentation at least quarterly. If the committee determines that expenditures are not balancing efficiently with revenues, the committee will make recommendations to the department for consideration and regulatory amendment.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated additional cost associated with this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits anticipated from this regulation include maximizing efficiency and balancing of expenditures with revenues.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost to implement.
(b) On a continuing basis: No cost to implement.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This new administrative regulation is established for the purpose of allowing the Plumbing Code Committee to review the budget and fee schedule to ensure that effective administration of the budget is adhered to. Fee schedules established through administrative regulations may be amended based upon continued revenue increases or decreases which result in fiscal excess or shortage.

(9) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings, and Construction, Division of Plumbing, and the State Plumbing Code Committee will be impacted by this new administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 318.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no revenues nor creates expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. Not applicable.

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

(c) How much will it cost to administer this program for the first year? Not applicable.

(d) How much will it cost to administer this program for subsequent years? Not applicable.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: There is no anticipated fiscal impact from this administrative regulation to state or local government.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of March 14, 2010

The April meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, April 14, 2010 at 10:00 a.m., in Room 149 of the Capitol Annex. Representative Leslie Combs, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the March, 2010 meeting were approved.

Present were:

Members: Senators Elizabeth Tori and Joey Pendleton and Representatives Leslie Combs, Robert Damron, Danny Ford and Jimmie Lee.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Chad Collins, Emily Harkenrider, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Napier.

Guests: Kathryn Gabhart, State Board of Elections; Beau Barnes, Kentucky Teachers' Retirement System; DeVon Hankins, Jeff Mosley, Travis Powell, Finance and Administration Cabinet; Larry Ball, Steve Lynn, Kentucky Law Enforcement Council; Ann Dangelo, Godwin Onodu, Todd Shipp, Nancy Albright, Transportation Cabinet; Todd Cassidy, Donald Smith, Tourism, Arts and Heritage Cabinet; Marc Guilfoil, Timothy West, Kentucky Horse Racing Commission; Dawn Bellis, Tim House, Richard Moloney, Department of Housing, Buildings, and Construction; Stephanie Brammer-Barnes, Mary Reinle Begley, Shirley Eldridge, Carol Hall, Marnie Mountjoy, Cabinet for Health and Family Services; Tony Senningre, Frank Henn Jr., Karen Hinkle, Debbie McGrath.

The Administrative Regulation Review Subcommittee met on Wednesday, April 14, 2010, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

STATE BOARD OF ELECTIONS: State-based Administrative Complaint Procedure

31 KAR 6:010. State-based administrative complaint procedure. Kathryn Gabhart, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to insert a citation; (2) to amend the RELATES TO paragraph and Sections 3, 4, 5, 9, and 11 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 4 to change the window of time a complainant has to correct a deficiency in the complaint from seven (7) days to seven (7) working days of receipt of notice of the deficiency. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:160. Annuity tables. Beau Barnes, deputy executive secretary, represented the system.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete 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 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.

102 KAR 1:225. General compliance with federal tax laws.

Office of the Secretary: Purchasing

200 KAR 5:314. Disclosure of contractor's financial records and information to certain governmental entities. Jeff Mosley, general counsel, and Travis Powell, deputy general counsel, represented the office.

In response to questions by Representative Ford, Mr. Mosley stated that current contracts were always bonded, but that providing financial information was requested by contractors who worked with the Transportation Cabinet. He stated that the requirements pertained to all contractors.

In response to a question by Co-Chair Tori, Mr. Mosley stated that the amendments were recommended by the University of Kentucky to clarify that the Finance and Administration Cabinet did not determine if information was proprietary.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to state that records and prequalification information confidentially disclosed as part of the bid process shall not be directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c); (2) to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS Chapter 13A. Without objection, and with agreement of the agency the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Kentucky Law Enforcement Council
Council

503 KAR 1:140 & E. Peace officer, telecommunicator, and court security officer professional standards. Larry Ball, executive director, and Steve Lynn, assistant general counsel, represented the council.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to clarify the physical ability testing requirements for precertification status; and (2) to amend the RELATES TO paragraph and Sections 4 through 13 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Vehicle Licensing: Division of Motor Carriers

601 KAR 1:220. Theft of motor fuel; procedures to obtain motor vehicle record. Ann D'Angelo, assistant general counsel; Godwin Onodu, assistant director; and Todd Shipp, special assistant and senior counsel, represented the division.

In response to questions by Representative Lee, Mr. Shipp stated that a motor fuel retailer may request the motor fuel theft report even if law enforcement was not immediately notified. Ms. D'Angelo and Mr. Onodu stated that the form required verification of the retailer or association's status in order to prevent an unlawful request for information. Mr. Shipp stated that the form was available online on the division's Web site. He stated that penalties already existed for an unlawful request for information at both the state and federal levels.

In response to questions by Senator Pendleton and Co-Chair Tori, Ms. D'Angelo stated that KRS 411.406 required the agency to promulgate an administrative regulation to provide for the motor fuel theft report. Mr. Shipp stated that the agency was also obligated pursuant to federal law to protect the privacy of certain driver information, which privacy protection was indirectly affected by this administrative regulation. Mr. Onodu stated that there had not been requests for the report, except for a recent request that could not be processed because the motor fuel retailer did not have the vehicle license plate numbers. Mr. Shipp stated that the agency established the fee for the report at three (3) dollars commensurate with a statutory fee for a similarly sized report. He stated that, if the public began requesting these reports, there would be a slight increase in cost to the agency but that the agency expected to be able to absorb that cost.

In response to a question by Representative Ford, Mr. Shipp stated that, without a vehicle license plate number, the agency would not be able to generate the report.

In response to questions by Co-Chair Combs, Mr. Onodu stated that the division did not have statistics regarding if there had

been a decrease in the need for this administrative regulation since the authorizing statute became effective. Mr. Shipp stated that the need seemed to have significantly decreased. Mr. Onodu stated that the fee was related to the cost of generating a title history.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1(1) to lower the fee for the report from ten (10) dollars to three (3) dollars; (2) to amend Section 2(1) to revise the form incorporated by reference; 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.

Department of Highways: Division of Maintenance: Right-of-Way

603 KAR 4:045. Cultural and recreational supplemental guide signs. Nancy Albright, director of maintenance; Ann D'Angelo, assistant general counsel; and Todd Cassidy, executive director, Economic Community Development, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add 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; (3) to amend Sections 1, 3, 5, and 7 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 12 to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Division of Licensing: Harness Racing

811 KAR 1:070 & E. Licensing Standardbred racing. Marc A. Guilfoil, deputy executive director, and Timothy West, assistant general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend Section 14 to delete the prohibition on firearm possession by a licensee on racing association grounds; (2) to completely revise Section 9 regarding search and seizure to limit: (a) the locations subject to search to those places authorized by statute; (b) the items subject to seizure to those in violation of a KHRC statute or administrative regulation, KRS Chapter 230 or KAR Title 810 or 811; and (c) out of competition testing to those authorized by administrative regulation, 811 KAR 1:240; (3) to completely revise Section 4 regarding driver's licenses for clarification and to incorporate by reference, rather than repeat, the U.S. Trotting Association licensing provisions; (4) to amend Sections 2 and 5 and the licensing application to update the licensing categories and to delete unused licensing categories; (5) to amend Section 10 to require employers to report to the commission discharged licensees; (6) to amend Section 23 to: (a) incorporate by reference Rule 17, Sections 1 through 10, of the U.S. Trotting Association; and (b) update the licensing application and the veterinarian approval form; and (7) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 6, 9 through 14, 16 through 21, and 23 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Housing, Buildings and Construction: Division of Heating, Ventilation and Air Conditioning: Heating, Ventilation and Air Conditioning Licensing Requirements

815 KAR 8:070. Installation permits. Dawn Bellis, general counsel; Tim House, director and acting manager, Heating Ventilation, and Air Conditioning; and Richard Moloney, commissioner, represented the department.

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 clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, 4, 5, and 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to incorporate the permit applications by reference. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 8:080. Inspections and tests.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 5, 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.

815 KAR 8:090. Fees and refunds.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE, RELATES TO paragraph, and Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (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. Without objection, and with agreement of the agency, the amendments were approved.

Division of Plumbing: Plumbing

815 KAR 20:050 & E. Installation permits.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Office

906 KAR 1:180 & E. Operation and services; personal services agencies. Mary Reinle Begley, inspector general, represented the cabinet.

In response to questions by Representative Lee, Ms. Begley stated that this administrative regulation did not affect home health services. She stated that this administrative regulation only applied to a nonmedical model of care. She added that the "administration of medication" had a legal definition that included evaluation of an individual; therefore, giving a preprepared dose of insulin or other medication did not constitute "administration of medication" and was not prohibited by this administrative regulation.

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.222; and (2) to amend the RELATES TO paragraph and Sections 1 through 4, 6, and 16 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 Aging and Independent Living: Division of Quality Living: Aging Services

910 KAR 1:260. Kentucky Family Caregiver Program. Shirley Eldridge, internal policy analyst; Carol Hall, social services specialist; and Marnie Mountjoy, internal policy analyst, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to include citations to KRS Chapter 205; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to include additional necessary definitions; (4) to amend Section 7 to clarify the department and district responsibilities regarding exception requests; and (5) to amend the RELATES TO paragraph and Sections 1 through 13 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 May 11, 2010, meeting of the Subcommittee:

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:066 & E. Certification and selection of eligibles for appointment.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Division of Sales and Use Taxes: Sales and Use Tax; Administration and Accounting
103 KAR 31:310. Sourcing of digital property.

Office of the Secretary: Purchasing
200 KAR 5:315. Suspension.

GENERAL GOVERNMENT CABINET: State Board of Examiners and Registration of Landscape Architects: Board
201 KAR 10:050. Fees.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Waste Management: Solid Waste Facilities
401 KAR 47:090. Solid waste permit fees.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Drivers License: Driver's License
601 KAR 12:060. Hardship driver's license.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare: Health Services and Facilities
902 KAR 20:400. Limited services clinics.

The subcommittee adjourned the meeting at 10:55 a.m. until May 11, 2010.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

NONE

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates K - 2

The Locator Index lists all administrative regulations published in VOLUME 36of the Administrative Register from July, 2009 through June, 2010. 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 35 are those administrative regulations that were originally published in VOLUME 35 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2009 bound Volumes were published.

KRS Index K - 13

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 36 of the Administrative Register.

Technical Amendment Index K - 25

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2009 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

Subject Index K - 26

The Subject Index is a general index of administrative regulations published in VOLUME 36 of the Administrative Register, and is mainly broken down by agency.

Regulation Number	35 Ky.R. Page No.	Effective Date

VOLUME 35

The administrative regulations listed under VOLUME 35 are those administrative regulations that were originally published in Volume 35 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2009 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	35 Ky.R. Page No.	Effective Date
101 KAR 2:066E		
Resubmitted	*F*-1710	1-9-09
103 KAR 3:030E	2635	5-14-09
Replaced		(See 36 Ky.R.)
105 KAR 1:130E	2385	4-15-09
Replaced		(See 36 Ky.R.)
200 KAR 6:070E	2199	2-17-09
Replaced		(See 36 Ky.R.)
200 KAR 14:011E	2200	2-19-09
Replaced	2664	7-6-09
200 KAR 15:010E	1984	2-2-09
Expired		8-1-09
201 KAR 21:090E	2645	5-12-09
Replaced		(See 36 Ky.R.)
201 KAR 37:010E	2646	5-7-09
Replaced		(See 36 Ky.R.)
302 KAR 16:111E	1986	2-13-09
Replaced	2429	6-5-09
505 KAR 1:100E	*F*-1721	1-15-09
Replaced	2741	7-6-09
735 KAR 1:010E	2387	4-7-09
Replaced		(See 36 Ky.R.)
735 KAR 1:020E	2391	4-7-09
Replaced		(See 36 Ky.R.)
787 KAR 1:330E	2648	4-17-09
Withdrawn		7-10-09
806 KAR 18:090E	2395	3-13-09
Expired		9-9-09
811 KAR 2:120E	*F*-1722	12-31-08
Replaced	2743	7-6-09
907 KAR 1:028E	2650	5-7-09
Replaced		(See 36 Ky.R.)
907 KAR 1:901E(r)	2653	5-7-09
Expired		11-3-09

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	35 Ky.R. Page No.	Effective Date
10 KAR 7:010		
Amended	1237	
Withdrawn		12-16-08
Amended	2464	(See 36 Ky.R.)
10 KAR 7:020		
Amended	2466	(See 36 Ky.R.)
11 KAR 4:080		
Amended	2314	
Amended	2315	(See 36 Ky.R.)
11 KAR 5:200		
Amended	2315	(See 36 Ky.R.)
11 KAR 18:010		
Amended	2317	(See 36 Ky.R.)
16 KAR 5:010		
Amended	2321	
As Amended	2655	6-8-09
101 KAR 2:066		
Amended	*F*-1815	
103 KAR 3:010		
Amended	2468	(See 36 Ky.R.)
103 KAR 3:030		
Amended	2775	(See 36 Ky.R.)
105 KAR 1:130		
Amended	2472	(See 36 Ky.R.)
200 KAR 5:315		
Amended	2779	(See 36 Ky.R.)
200 KAR 5:380		
Amended	2331	
As Amended	2663	7-6-09
200 KAR 6:070	2371	
Amended	2764	(See 36 Ky.R.)
200 KAR 14:011		
Amended	2332	
As Amended	2664	7-6-09
200 KAR 17:010		
Amended	2474	(See 36 Ky.R.)
201 KAR 1:065		
Amended	2781	(See 36 Ky.R.)
201 KAR 1:100		
Amended	2782	(See 36 Ky.R.)
201 KAR 2:045		
Amended	2484	(See 36 Ky.R.)
201 KAR 2:320	2832	(See 36 Ky.R.)
201 KAR 10:050		
Amended	*F*-1834	7-6-09
201 KAR 16:015		
Amended	*J*-1854	10-2-09
201 KAR 18:115		
Amended	2335	
Amended	2765	7-31-09
201 KAR 18:142		
Amended	2337	
Amended	2768	(See 36 Ky.R.)
201 KAR 20:056		
Amended	2787	8-12-09
201 KAR 20:057		
Amended	2790	8-12-09
201 KAR 20:162		
Amended	2791	8-12-09
201 KAR 20:225		
Amended	2340	
As Amended	2666	6-11-09
201 KAR 20:260		
Amended	2793	(See 36 Ky.R.)
201 KAR 20:270		
Amended	2341	
As Amended	2667	6-11-09
201 KAR 20:290		
Amended	2343	
As Amended	2668	6-11-09
201 KAR 20:360		
Amended	2346	(See 36 Ky.R.)
201 KAR 21:090		
Amended	2796	(See 36 Ky.R.)
201 KAR 21:095		
Amended	2126	
Amended	2770	(See 36 Ky.R.)
201 KAR 22:045		
Amended	2485	(See 36 Ky.R.)
201 KAR 30:040		
Amended	2487	7-31-09
201 KAR 32:025		
Amended	*J*-1866	
As Amended	2414	7-31-09
201 KAR 32:030		
Amended	*J*-1863	
As Amended	2415	7-31-09
201 KAR 37:010		
Amended	2798	(See 36 Ky.R.)

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300 KAR 7:010	2834	(See 36 Ky.R.)
301 KAR 1:201		
Amended	2488	7-30-09
301 KAR 2:111		
Amended	2349	
As Amended	2670	7-6-09
301 KAR 2:132		
Amended	2799	8-28-09
301 KAR 2:172		
Amended	2351	
As Amended	2671	7-6-09
301 KAR 2:178		
Amended	2354	
As Amended	2673	7-6-09
302 KAR 100:030	2836	(See 36 Ky.R.)
401 KAR 5:002		
Amended	2493	(See 36 Ky.R.)
401 KAR 5:005		
Amended	2507	9-25-09
401 KAR 5:055		
Amended	2520	(See 36 Ky.R.)
401 KAR 5:060		
Amended	2526	9-25-09
401 KAR 5:065		
Amended	2551	9-25-09
401 KAR 5:080		
Amended	2559	9-25-09
401 KAR 8:010		
Amended	2804	(See 36 Ky.R.)
401 KAR 8:022		
Amended	2806	(See 36 Ky.R.)
401 KAR 8:040		
Amended	*F*-1844	
As Amended	2677	7-6-09
401 KAR 8:050		
Amended	*F*-1847	7-6-09
401 KAR 8:075		
Amended	2808	(See 36 Ky.R.)
401 KAR 8:510		
Amended	2810	(See 36 Ky.R.)
401 KAR 8:600		(See 36 Ky.R.)
Amended	2812	
401 KAR 10:026		
Amended	129	
Amended	860	
As Amended	2679	7-6-09
401 KAR 10:029		
Amended	157	
Amended	904	
As Amended	2721	7-6-09
401 KAR 10:030		
Amended	161	
Amended	908	(See 36 Ky.R.)
401 KAR 10:031		
Amended	177	
Amended	930	
As Amended	2723	7-6-09
401 KAR 47:090		
Amended	2814	(See 36 Ky.R.)
401 KAR 101:001	*F*-1947	
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401 KAR 101:010	*F*-1949	
As Amended	2734	7-6-09
401 KAR 101:020	*F*-1951	
As Amended	2735	7-6-09
401 KAR 101:030	*F*-1954	
As Amended	2737	7-6-09
401 KAR 101:040	*F*-1956	
As Amended	2738	7-6-09
500 KAR 2:010		
Repealed	2837	10-2-09
500 KAR 2:011	2837	10-2-09
500 KAR 2:020		
Amended	2817	(See 36 Ky.R.)
505 KAR 1:100		
Amended	*F*-1851	
Amended	2454	
As Amended	2741	7-6-09
702 KAR 4:160		
Amended	2142	(See 36 Ky.R.)
702 KAR 6:010		
Amended	2150	(See 36 Ky.R.)
702 KAR 6:020		
Amended	2151	(See 36 Ky.R.)
702 KAR 6:031*(r)*	2187	
702 KAR 6:040		
Amended	2152	(See 36 Ky.R.)
702 KAR 6:045		
Amended	2154	(See 36 Ky.R.)
702 KAR 6:075		
Amended	2155	(See 36 Ky.R.)
702 KAR 6:090		
Amended	2157	(See 36 Ky.R.)
702 KAR 7:065		
Amended	2158	(See 36 Ky.R.)
702 KAR 7:130	483	
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735 KAR 1:010		
Amended	2565	(See 36 Ky.R.)
735 KAR 1:020		
Amended	2570	(See 36 Ky.R.)
780 KAR 1:010		
Amended	1891	(See 36 Ky.R.)
806 KAR 17:480		
Amended	1607	
Amended	2081	
As Amended	2742	7-6-09
810 KAR 1:009		
Amended	2573	(See 36 Ky.R.)
810 KAR 1:025		
Amended	1610	
Withdrawn		7-17-09
810 KAR 1:026		
Amended	2577	(See 36 Ky.R.)
811 KAR 1:070		
Amended	1617	
811 KAR 2:120		
Amended	*F*-1914	
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815 KAR 7:120		
Amended	2359	
Amended	2772	(See 36 Ky.R.)
815 KAR 7:125		
Amended	2362	(See 36 Ky.R.)
815 KAR 10:060		
Amended	2364	(See 36 Ky.R.)
815 KAR 20:020		
Amended	2582	(See 36 Ky.R.)
815 KAR 20:060		
Amended	2586	(See 36 Ky.R.)
815 KAR 20:070		
Amended	2588	(See 36 Ky.R.)
815 KAR 20:071		
Amended	2591	(See 36 Ky.R.)
815 KAR 20:074		
Amended	2593	(See 36 Ky.R.)
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Repealed	2624	7-29-09
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815 KAR 20:090		

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Amended	2598	(See 36 Ky.R.)
815 KAR 20:120		
Amended	2601	(See 36 Ky.R.)
815 KAR 20:130		
Amended	2608	(See 36 Ky.R.)
815 KAR 20:170		
Amended	2612	(See 36 Ky.R.)
815 KAR 20:195		
Amended	2613	(See 36 Ky.R.)
815 KAR 25:060		
Amended	2367	
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900 KAR 5:020		
Amended	*F*-1918	
Amended	2455	(See 36 Ky.R.)
900 KAR 7:030	2838	(See 36 Ky.R.)
902 KAR 19:021	2842	8-12-09
902 KAR 47:200	2843	(See 36 Ky.R.)
902 KAR 55:110		
Amended	2615	7-31-09
907 KAR 1:028		
Amended	2822	(See 36 Ky.R.)
907 KAR 1:585		
Amended	1637	
Amended	*F*-1802	
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907 KAR 1:645		
Amended	1640	
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907 KAR 1:650		
Amended	1644	
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907 KAR 1:655		
Amended	1649	
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907 KAR 3:170		
Amended	*F*-1923	
Amended	2456	
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908 KAR 3:050		
Amended	2618	7-31-09
908 KAR 3:060		
Amended	2620	7-31-09
911 KAR 2:200		
Amended	2825	(See 36 Ky.R.)

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

13 KAR 2:045E	971	10-11-09
Replaced	2033-*M*	4-2-10
101 KAR 2:066E	275	7-8-09
Withdrawn		1-4-10
Resubmitted	1860	1-4-10
101 KAR 2:102E	277	7-10-09
Replaced	1002	12-4-09
101 KAR 2:210E	719	9-15-09
Replaced	1194	1-4-10
101 KAR 3:015E	282	7-15-09
Replaced	1006	12-4-09
103 KAR 3:030		(See 35 Ky.R.)
Replaced	310	9-4-09
103 KAR 3:040	1862	1-15-10
103 KAR 5:180E	1163	11-13-09
103 KAR 5:190E	1166	11-13-09
Replaced	2040-A	4-2-10
103 KAR 17:150E	533	7-23-09
Replaced	1011	12-4-09
103 KAR 44:130	535	8-14-09
Replaced	1012	12-4-09
105 KAR 1:130E		(See 35 Ky.R.)
Replaced	19	7-29-09
105 KAR 1:390E	4	6-15-09
Replaced	141	10-2-09
200 KAR 6:070E		(See 35 Ky.R.)
Replaced	20	7-29-09
201 KAR 12:105E	6	6-11-09
Replaced	1016	12-4-09
201 KAR 21:090E		(See 35 Ky.R.)
Replaced	568	9-16-09
201 KAR 25:012E	720	8-19-09
201 KAR 37:010		(See 35 Ky.R.)
Replaced	573	10-2-09
301 KAR 2:221E	1168	11-3-09
Replaced	1911	3-5-10
301 KAR 2:222E	1171	11-3-09
Replaced	1913	3-5-10
301 KAR 2:225E	721	8-28-09
Replaced	1199	12-11-09
307 KAR 8:010E	536	8-4-09
Replaced	1021	12-4-09
307 KAR 9:010E	724	8-20-09
Replaced	1201	1-4-10
401 KAR 51:001E	725	9-14-09
Replaced	1462	2-5-10
401 KAR 51:017E	738	9-14-09
Replaced	1260	2-5-10
401 KAR 51:052E	754	9-14-09
Replaced	1474	2-5-10
405 KAR 8:015E	1178	11-3-09
Withdrawn		4-9-10
501 KAR 6:020E	767	9-11-09
Replaced	1486	2-5-10
501 KAR 6:999E	770	9-11-09
Replaced	916	2-5-10
503 KAR 1:140E	1871	1-5-10
505 KAR 1:160E	1180	11-13-09
703 KAR 5:080E	8	6-15-09
Replaced	159	9-14-09
703 KAR 5:180E	2020-*M*	1-15-10
750 KAR 1:010E	1181	11-13-09
Replaced	2062-*M*	4-2-10
735 KAR 1:010E		(See 35 Ky.R.)
Replaced	65	7-13-09
735 KAR 1:020E		(See 35 Ky.R.)
Replaced	67	7-13-09
806 KAR 17:391E	287	6-25-09
Expired		12-23-09
806 KAR 17:570E	288	6-26-09

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Replaced	1064	1-4-10
810 KAR 1:025E	537	7-20-09
Withdrawn		9-30-09
Resubmitted	975	9-30-09
Withdrawn		3-26-10
Resubmitted	2158	
810 KAR 1:034E	982	9-30-09
Withdrawn		3-17-10
810 KAR 1:037E	2165	3-17-10
810 KAR 1:100E	2168	3-17-10
811 KAR 1:034E	986	9-30-09
Withdrawn		3-17-10
811 KAR 1:037E	2169	3-17-10
811 KAR 1:070E	545	7-20-09
Withdrawn		1-15-10
Resubmitted	2023-*M*	1-15-10
811 KAR 1:230	2172	
811 KAR 2:130	2174	
815 KAR 7:120E	990	10-01-09
815 KAR 20:050E	992	10-01-09
906 KAR 1:180E	1184	11-13-09
907 KAR 1:028E	820	(See 35 Ky.R.)
Replaced	330	8-12-09
907 KAR 3:183E	306	6-26-09
Replaced		11-6-09
921 KAR 2:017E	1190	11-2-09
Replaced	1372	3-5-10
922 KAR 1:060E	994	9-30-09
Replaced	1494	2-5-10
922 KAR 6:010E	773	8-28-09
Replaced	1496	2-5-10
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10 KAR 7:020		(See 35 Ky.R.)
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11 KAR 3:100		
Amended	109	10-12-09
11 KAR 4:080	13	(See 35 Ky.R.)
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Amended	1960	
11 KAR 5:145		
Amended	123	10-12-09
Amended	1508	
11 KAR 5:200		(See 35 Ky.R.)
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11 KAR 8:030		
Amended	1510	
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11 KAR 12:060		
Amended	2055-*A*	
11 KAR 18:010		(See 35 Ky.R.)
As Amended	14	7-13-09
13 KAR 1:020		
Amended	826	
Amended	1232	
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13 KAR 1:040	942	
Withdrawn		1-7-10
13 KAR 1:050	943	
Amended	1241	
Amended	1887	3-5-10
13 KAR 2:045		
Amended	1083	
Amended	1951	
As Amended	2033-*M*	4-2-10
16 KAR 2:010		
Amended	1294	
As Amended	1892	3-5-10
16 KAR 2:120		
Amended	1297	
As Amended	1894	3-5-10
16 KAR 2:200	1390	3-5-10
16 KAR 7:010		
Amended	630	
As Amended	998	11-9-09
16 KAR 8:030		
Amended	125	
As Amended	553	9-14-09
31 KAR 2:010		
Amended	1087	
As Amended	1896	3-5-10
31 KAR 2:020	1141	
Amended	1499	
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31 KAR 3:010		
Amended	1095	
As Amended	1434	
31 KAR 4:020		
Amended	1513	
As Amended	2037-*M*	4-2-10
31 KAR 4:030		
Amended	1515	
As Amended	2037-*M*	4-2-10
31 KAR 6:010		
Amended	2110-*M*	
As Amended	2176	
101 KAR 1:325		
Amended	1961	
101 KAR 2:066		
Amended	414	
Withdrawn		1-4-10
Amended	1963	
101 KAR 2:102		
Amended	416	
As Amended	1002	12-4-09
101 KAR 2:120		
Amended	420	
Withdrawn		12-07-09
Amended	1516	
As Amended	2038-*M*	4-2-10
101 KAR 2:210		
Amended	835	
As Amended	1194	1-4-10
101 KAR 3:015		
Amended	423	
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102 KAR 1:160		
Amended	1966	
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102 KAR 1:225		
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102 KAR 1:310	703	
As Amended	1010	11-9-09
103 KAR 3:010		(See 35 Ky.R.)
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Amended	2056-*A*	
103 KAR 3:020		
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103 KAR 3:030		(See 35 Ky.R.)
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Amended	2061-*A*	
103 KAR 3:040		
Amended	1968	
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103 KAR 3:050		
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Amended	2082-*M*	
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103 KAR 5:190	1394-*M*	
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103 KAR 15:110		
Amended	1553	
As Amended	2042-*M*	4-2-10
103 KAR 15:120	1554	
As Amended	2043-*M*	4-2-10
103 KAR 15:140		
Amended	1519	
As Amended	2044-*M*	4-2-10
103 KAR 17:150	704	
As Amended	1011	12-4-09
103 KAR 18:110		
Amended	1522	
As Amended	2046-*M*	4-2-10
103 KAR 31:310	2003	
103 KAR 43:310		
Amendment	1977	
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103 KAR 44:130	706	
As Amended	1012	12-4-09
105 KAR 1:130		(See 35 Ky.R.)
As Amended	19	7-29-09
105 KAR 1:390		
Amended	141	10-02-09
200 KAR 5:314		
Amended	1300	
As Amended	2177	
200 KAR 5:315		(See 35 Ky.R.)
Amended	616	
200 KAR 6:070		(See 35 Ky.R.)
As Amended	20	7-29-09
200 KAR 15:010		
Amended	836	
As Amended	1435	2-5-10
200 KAR 17:010		(See 35 Ky.R.)
As Amended	21	7-29-09
201 KAR 1:065		(See 35 Ky.R.)
As Amended	319	9-4-09
201 KAR 1:100		
Amended	2782	(See 35 Ky.R.)
As Amended	319	9-4-09
201 KAR 2:045		(See 35 Ky.R.)
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201 KAR 2:320		
Amended	618	
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201 KAR 10:050		
Amended	1301	
As Amended	2047-*M*	
201 KAR 11:121		
Amended	429	
As Amended	1012	12-4-09
201 KAR 11:190		
Amended	430	
Withdrawn		3-1-10
201 KAR 11:215	485	
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201 KAR 11:230		
Amended	143	
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201 KAR 11:250		
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201 KAR 11:300		
Amended	434	
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Amended	435	
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Amended	147	
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201 KAR 14:105		
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Amended	843	
As Amended	1439	2-5-10
201 KAR 17:027		
Amended	845	
As Amended	1441	2-5-10
201 KAR 17:030		
Amended	847	
As Amended	1442	2-5-10
201 KAR 17:032	948	
As Amended	1443	2-5-10
201 KAR 17:034	950	
As Amended	1445	2-5-10
201 KAR 17:036	951	
As Amended	1446	2-5-10
201 KAR 17:038	952	
As Amended	1446	2-5-10
201 KAR 17:041		
Amended	849	
As Amended	1447	2-5-10
201 KAR 17:090		
Amended	851	
As Amended	1448	2-5-10
201 KAR 17:100		
Amended	854	
As Amended	1450	2-5-10
201 KAR 18:142		(See 35 Ky.R.)
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201 KAR 20:161		
Amended	1978	
201 KAR 20:163		
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201 KAR 20:240		
Amended	527	
As Amended	780	10-21-09
Amended	2071-*A*	
201 KAR 20:260		(See 35 Ky.R.)
As Amended	322	8-12-09
201 KAR 20:360		(See 35 Ky.R.)
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201 KAR 20:370		
Amended	528	
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201 KAR 20:450		
Amended	527	
201 KAR 20:470		
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201 KAR 20:490		
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As Amended	782	10-21-09
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201 KAR 20:470		
Amended	1984	
201 KAR 21:041		
Amended	855	
As Amended	1194	1-4-10
201 KAR 21:090		(See 35 Ky.R.)
As Amended	568	9-16-09
201 KAR 21:095		(See 35 Ky.R.)
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201 KAR 22:020		
Amended	2208	
201 KAR 22:045		(See 35 Ky.R.)
As Amended	29	7-31-09
Amended	2209	
201 KAR 22:053		
Amended	1305	
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201 KAR 22:135		
Amended	2211	
201 KAR 23:075		
Amended	635	
As Amended	1195	1-4-10
201 KR 25:012		
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201 KAR 30:010		
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201 KAR 30:050		
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201 KAR 30:070		
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201 KAR 32:035		
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201 KAR 33:010		
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201 KAR 33:015		
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201 KAR 33:020		
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201 KAR 33:030		
Amended	1311	
As Amended	1907	3-5-10
201 KAR 33:050		
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201 KAR 34:010		
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201 KAR 34:015		
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201 KAR 34:030		
Amended	642	
As Amended	1018	12-4-09
201 KAR 34:040		
Amended	645	
As Amended	1020	12-4-09
201 KAR 34:050		
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201 KAR 36:060		
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300 KAR 7:010		(See 35 Ky.R.)
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Amended	860	
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Amended	1099	
Amended	1501	
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* Statement of Consideration not filed by deadline
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*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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132.290	103 KAR 3:010
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132.320	103 KAR 3:010
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132.360	103 KAR 3:030
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132.487	103 KAR 3:010
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171.260	725 KAR 2:060
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171.270	725 KAR 2:060
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171.420	725 KAR 1:061
171.450	725 KAR 1:020
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171.470	725 KAR 1:025
171.480	725 KAR 1:025
171.500	725 KAR 1:025
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171.600	725 KAR 1:020
171.670	725 KAR 1:020
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186.115	601 KAR 23:010
186A	601 KAR 9:130
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186A.510	601 KAR 23:010
186A.535	601 KAR 23:010
187.310	601 KAR 1:220
189.230	603 KAR 5:230
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194A.030	900 KAR 5:050
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196.030	501 KAR 16:001
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198B.060	815 KAR 7:070
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198B.080	815 KAR 7:120
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198B.090	815 KAR 7:070
198B.095	815 KAR 7:070
198B.110	815 KAR 7:120
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198B.260	815 KAR 7:120
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198B.650	815 KAR 8:010
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198B.654	815 KAR 8:010
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198B.656	815 KAR 8:010
	815 KAR 8:020
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198B.658	815 KAR 8:010
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	815 KAR 8:060
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198B.672	815 KAR 8:050
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198B.676	815 KAR 8:010
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198B.684	815 KAR 8:010
	815 KAR 8:020
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198B.700	815 KAR 6:010
198B.706	815 KAR 6:020
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198B.712	815 KAR 6:010
198B.714	815 KAR 6:010
198B.722	815 KAR 6:010
198B.724	815 KAR 6:010
198B.990	815 KAR 7:120
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198B.6672	815 KAR 8:070
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198B.6676	815 KAR 8:070
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199.500	922 KAR 1:060
199.502	922 KAR 1:060
199.555	922 KAR 1:060
199.557	922 KAR 1:060
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199.892	922 KAR 2:160
199.894	922 KAR 2:160
199.896	922 KAR 2:160
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199.8982	922 KAR 2:160
199.899	922 KAR 2:160
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205.200	921 KAR 2:017
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205.211	921 KAR 2:017
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205.460	910 KAR 1:160
205.465	910 KAR 1:160
205.520	907 KAR 1:715
205.639	907 KAR 3:183
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205.705	921 KAR 1:380
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205.900	910 KAR 3:030
205.992	921 KAR 1:380
205.950	910 KAR 1:160
205.955	910 KAR 1:150
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209.020	922 KAR 1:320
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216B.085	900 KAR 6:090
216B.086	900 KAR 6:090
216B.090	900 KAR 6:090
216B.095	900 KAR 6:075
216B.615	900 KAR 6:085
216B.990	900 KAR 6:060
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224.10-440	401 KAR 5:075
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224.16-050	401 KAR 8:020
224.18-100	401 KAR 5:065
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227A.060	815 KAR 35:060
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227.550	815 KAR 7:120
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227.570	815 KAR 25:080
227.580	815 KAR 25:080
227.590	815 KAR 25:080
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227.600	815 KAR 25:080
227.630	815 KAR 25:080
227.640	815 KAR 25:100
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230.260	810 KAR 1:025
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	811 KAR 1:015
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	811 KAR 1:070
230.280	811 KAR 1:070
	810 KAR 1:025
	810 KAR 1:037
	811 KAR 1:037
230.290	810 KAR 1:025
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230.300	810 KAR 1:025
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230.260	811 KAR 1:037
230.280	811 KAR 1:037
230.290	811 KAR 1:037
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243.710	103 KAR 3:010
243.720	103 KAR 3:010
243.730	103 KAR 3:010
243.850	103 KAR 3:010
243.884	103 KAR 3:010
244.590	804 KAR 11:030
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309.1335	201 KAR 34:020
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310.042	201 KAR 33:050
310.050	201 KAR 33:020
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314.011	201 KAR 20:161
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324A.030	201 KAR 30:030
324A.035	201 KAR 30:030
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324A.040	201 KAR 30:030
324A.050	201 KAR 30:070
324A.052	201 KAR 30:030
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327.010	201 KAR 22:045
327.040	201 KAR 22:053
327.050	201 KAR 22:020
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327.060	201 KAR 22:020
327.070	201 KAR 22:045
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334A.160	201 KAR 17:030
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338.051	803 KAR 2:300
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