ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 37, NUMBER 1
THURSDAY, JULY 1, 2010

Dear Subscriber:

The June issue of the Administrative Register mistakenly contained a notice detailing changes to the subscriptions to and availability of the Administrative Regulations Service and the Administrative Register of Kentucky. The changes, which included a new DVD service, an online posting of the Register, and increased costs for paper versions, will **not** take place this year. *The publications will be available this year as they have been in the past, and subscription prices will not increase.*

The staff of the Legislative Research Commission intends to review and thoroughly test options to make these publications available to you, including DVD availability. We believe changes may occur next year. Future subscription costs for paper copies may increase.

I apologize for the miscommunication contained in the Administrative Register and any inconvenience this may have caused.

Sincerely,

Robert Sherman
Director

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MAIL TO: Bettina Abshire Smith
KY Administrative Register
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ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 37, NUMBER 1
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ARRS - July 13, 2010 TENTATIVE AGENDA 1
REGULATION REVIEW PROCEDURE 3

EMERGENCIES:
Board of Elections 4
Justice and Public Safety Cabinet 9
Kentucky Horse Racing Commission 13

AS AMENDED:
Board of Physical Therapy 34
Department of Fish and Wildlife Resources 35
EEC: Division of Water 44
EEC: Division of Compliance Assistance 51
EEC: Division of Waste Management 53
Transportation Cabinet 56
Department of Education 60
Labor Cabinet 61
Department of Housing, Buildings and Construction 65

AMENDED AFTER COMMENTS:
NONE

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JUNE 15, 2010:
Kentucky Higher Education Assistance Authority 71
Education and Professional Standards Board 86
Board of Elections 91
Office of the Attorney General 96
Kentucky Retirement Systems 99
Kentucky Real Estate Appraisers Board 101
Department of Fish and Wildlife Resources 102
Department of Agriculture 112
Tourism, Arts and Heritage 121
EEC: Division of Water 123
Justice and Public Safety Cabinet 127
Transportation Cabinet 131
Department of Education 135
Education and Workforce Development Cabinet 141
Labor Cabinet 144
EEC: Office of Mine Safety 164
Kentucky Horse Racing Commission 169
Department of Housing, Buildings and Construction 186

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JUNE 15, 2010:
Board of Medical Licensure 194
Office of the Secretary 195
Kentucky Horse Racing Commission 196
Department of Housing, Buildings and Construction 199

ARRS Report 203
OTHER COMMITTEE REPORTS 206

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates ..... **A- 2**
KRS Index ..... **A - 5**
Technical Amendments ..... **A - 7**
Subject Index ..... **A - 8**

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet July 13, 2010 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1-2** of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2009 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

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TENTATIVE AGENDA, JULY 13, 2010, at 1:00 p.m., Room 149 Capitol Annex

COUNCIL ON POSTSECONDARY EDUCATION

Nonpublic Colleges

13 KAR 1:020. Private college licensing.

PERSONNEL CABINET

Personnel Cabinet, Classified

101 KAR 2:066 & E. Certification and selection of eligibles for appointment. ("E" expires 7/3/2010) (Deferred from March)

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

Purchasing

200 KAR 5:315. Debarment. (Amended After Comments) (Deferred from September)

GENERAL GOVERNMENT
State Board of Examiners and Registration of Landscape Architects

Board

201 KAR 10:050. Fees. (Deferred from January)

Board of Veterinary Examiners

Board

201 KAR 16:030 & E. License, renewal notice, exemption. ("E" expires 11/09/2010)

Board of Nursing

Board

201 KAR 20:510. Voluntary relinquishment of a license or credential.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality

New Source Standards

401 KAR 59:015. New indirect heat exchangers.

Department for Natural Resources
Division of Mine Permits

Permits

405 KAR 8:010 & E. General provisions for permits. ("E" expires 10/17/10)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training

General Training Provision

503 KAR 3:010. Basic Law enforcement training course recruit conduct requirements; procedures and penalties.
503 KAR 3:040. Telecommunications academy trainee requirements; misconduct; penalties; discipline procedures.
503 KAR 3:110. Certified court security officers academy trainee requirements; misconduct; penalties; discipline procedures.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

Administration

601 KAR 2:020. Drivers' privacy protection.

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

School Administration and Finance

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

Department of Workforce Investment
Office of Vocational Rehabilitation

Administration

781 KAR 1:020. General provisions for operations of the Office of Vocational Rehabilitation. (Deferred from June)
781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services. (Deferred from June)

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control

Malt Beverage Equipment, Supplies and Service

804 KAR 11:030. Beer tastings. (Amended After Comments) (Deferred from June)

Kentucky Horse Racing Commission
Division of Licensing

Thoroughbred Racing

810 KAR 1:025 & E. Licensing thoroughbred racing. ("E" expires 9/22/10) (Deferred from June)
810 KAR 1:037 & E. Licensing of racing associations. ("E" expires 9/13/10) (Deferred from June)
810 KAR 1:100 & E. Frivolous appeals. ("E" expires 9/13/10) (Deferred from June)

Harness Racing

811 KAR 1:037 & E. Licensing of racing associations. ("E" expires 9/13/10) (Deferred from June)

811 KAR 1:230 & E. Frivolous appeals. ("E" expires 9/13/10) (Deferred from June)

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:130 & E. Frivolous appeals. ("E" expires 9/23/10) (Deferred from June)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

State Health Plan

900 KAR 5:020. State Health Plan for facilities and services. (Comments Received)

Certificate of Need

900 KAR 6:020. Certificate of need application fees schedule. (Deferred from June)

900 KAR 6:060. Timetable for submission of certificate of need applications. (Comments Received)

Office of Inspector General
Division of Healthcare

Health Services and Facilities

902 KAR 20:400. Limited services clinics. (Amended After Comments) (Deferred from April)

Department for Aging and Independent Living
Division of Quality Living

Aging Services

910 KAR 1:240. Certification of assisted-living communities.

Department for Income Support
Child Support Enforcement

Income Support

921 KAR 1:410. Child support collection and enforcement.

Department for Community Based Services
Division of Family Support

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

921 KAR 2:530E. Work Now Kentucky Program. ("E" expires 11/10/10)

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, JUNE 15, 2010

STATEMENT OF EMERGENCY
31 KAR 4:130E

Nature of the emergency: The emergency amendment to this administrative regulation is being promulgated in response to the enactment of the Military and Overseas Voter Empowerment Act of 2009 (MOVE), codified at 42 U.S.C. 1973ff-1, and the provisions that each state is required to make available to military and overseas voters by the 2010 General Election. This emergency amendment is being promulgated to ensure that the new procedures established by MOVE and provided for in this amendment comply with the language of 42 U.S.C. 1973ff-1 requiring each state to provide multiple electronic methods by which military, overseas citizens, and their dependents may register to vote, request an absentee ballot, and receive the absentee ballot. This emergency amendment must be effective immediately to require all of Kentucky's election officials to participate prior to the fifty (50) day deadline established by KRS 117.085 and the forty-five (45) day deadline established by MOVE for the printing and delivery of all absentee ballots to military and overseas citizens who request or have requested absentee ballots prior to the 2010 General Election. This emergency amendment is also necessary to ensure that all 120 counties are uniformly accepting and processing military and overseas voters' requests via facsimile transmission. The reasons why an ordinary administrative regulation is not sufficient: An ordinary amendment is not sufficient because it will not be effective until after the fifty (50) day deadline established by KRS 117.085 and the forty-five (45) day deadline established by MOVE for printing and delivery of absentee ballots to military and overseas voters. A delay in the enactment of this amendment may interfere with the constitutional right to vote of members of the military, their dependents, and overseas citizens. This emergency amendment shall be replaced by an ordinary amendment to the administrative regulation filed with the Regulations Compiler. The ordinary amendment to this administrative regulation is identical to this emergency amendment to this administrative regulation.

STEVE BESHEAR, Governor
TREY GRAYSON, Chairman

KENTUCKY STATE BOARD OF ELECTIONS
(Emergency Amendment)

31 KAR 4:130E. Facsimile transmission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens [~~Submitting Federal Post Card Application by facsimile~~].

RELATES TO: KRS 116.045, 116.0452, 117.079, 117.085, 117.086, 42 U.S.C. 1973ff, 42 U.S.C. 1793ff-1
STATUTORY AUTHORITY: KRS 116.045(4)(c), (e), 117.079 [~~117.015(1)(a)~~], 117.086(1), 42 U.S.C. 1973ff, 1973ff-1
EFFECTIVE DATE: June 15, 2010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. [~~117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.~~] 42 U.S.C. 1973ff-1 provides that each state shall use the official post card form for simultaneous voter registration application and absentee ballot application. The Military and Overseas Voter Empowerment Act of 2009, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one (1) means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, balloting, and election materials and information. KRS 116.045(4)(c) provides that any person may register to vote or may change his or her party affiliation by means of the Federal Post Card Application if the person is a resident of Kentucky and a member of the Armed Forces, a dependent of members of the Armed Forces, or an overseas citizen. KRS 116.045(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.085(1)(b) mandates that the county boards of elections accept the Federal Post Card Application by facsimile and that the application may be used to register to vote and to apply for an absentee ballot. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the blank absentee ballot by facsimile.

Section 1. Definitions. (1) "Application" means the Federal Post Card Application, Standard Form 76.

(2) "Instructions to voter" means the Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Emailed an Absentee Ballot, SBE 46A.

(3) "Transmission sheet" means the Official Election Materials - Electronic Transmission Sheet.

Section 2. Who May Request Federal Post Card Application by Facsimile. (1) Any resident of Kentucky may transmit a request for an application to the office of the county clerk of the county where the applicant resides via facsimile if the applicant meets one (1) of the following criteria:

(a) Is a member of the Armed Forces;

(b) Is a dependent of a member of the Armed Forces; or

(c) Is a citizen residing overseas.

(2) If the applicant desires to have the application faxed to him or her, the applicant shall indicate this and the appropriate facsimile number on his or her request.

Section 3. Requests for Applications. (1) Upon receiving a request for an application by facsimile from or on behalf of a person who meets the requirements listed in Section 2(1), a county clerk shall complete the transmission sheet and the county clerk's portion of the application. The county clerk shall then do one (1) of the following:

(a) Transmit the transmission sheet and the application to the Federal Voting Assistance Program at one (1) of the numbers listed on the transmission sheet; or

(b) Transmit the transmission sheet and the application to the voter at the facsimile number provided by the voter on the absentee ballot application.

(2) If the county clerk has faxed the materials through the Federal Voting Assistance Program's facsimile numbers, [~~the county clerk shall not transmit the application directly to the applicant.~~] the Federal Voting Assistance Program shall transmit the application to the applicant via facsimile.

(3) If the applicant does not clearly request that the application be sent via a facsimile machine, then the county clerk may transmit the application by the U.S. mail.

Section 4. Processing a Completed Application by Facsimile. (1) The county clerk shall accept any properly-completed Federal Post Card Application by facsimile for the purposes of voter registration and application for an absentee ballot from any person who fulfills the eligibility requirements listed in Section 2(1) of this administrative regulation.

(2) The county clerk shall accept a properly-completed application for voter registration at any time consistent with the timelines established by KRS 116.0452.

(3) If an application for an absentee ballot is received by facsimile less than seven (7) days before the applicable election, the county clerk shall not process the application. If a completed application for an absentee ballot is received by facsimile not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the application, in accordance with KRS

117.085(1)(b).

(4) The county clerk shall verify the applicant's eligibility. If the applicant is eligible to vote in the current election, then the county clerk shall prepare a faxable copy of the original blank absentee ballot.

(5) The county clerk shall mark the original blank absentee ballot "Faxed to {Military or Overseas} [~~Absentee~~] Voter" and the ballot shall be retained. The original blank absentee ballot shall not be reused.

(6) The county clerk shall complete a transmission sheet, the county clerk's portion of the voter verification sheet, [~~SBE 46B,~~] and the instructions to voter sheet. The faxable copy of the original blank absentee ballot shall be sent via facsimile, along with the voter verification sheet, the instructions to voter sheet, and the transmission sheet to one (1) of the Federal Voting Assistance Program facsimile numbers listed on the transmission sheet or directly to the facsimile number provided by the voter.

(7) If the county clerk has faxed the materials through the Federal Voting Assistance Program's facsimile numbers, [~~The county clerk shall not transmit the ballot and related materials directly to the voter.~~] the Federal Voting Assistance Program shall transmit the documents to the voter via facsimile.

(8) If the county clerk receives a faxed application that[~~which~~] does not clearly indicate whether the ballot is to be transmitted by mail or by facsimile, the county clerk shall transmit the blank absentee ballot by U.S. mail.

Section 5. Voter's Instructions on Completing an Absentee Ballot Received Via Facsimile. (1) When a voter receives an absentee ballot via facsimile, the voter shall mark the absentee ballot and seal it in an inner envelope. The voter shall then complete and sign the voter verification sheet.

(2) If the voter required assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall:

(a) Print his or her name, voting address, and precinct number on the back of the outer envelope as found on the voter verification sheet;

(b) Seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope;

(c) Place his or her signature across the back flap of the outer envelope;

(d) Print "Absentee Ballot" on the front of the outer envelope without obstructing[~~, but shall not obstruct~~] the address area; and

(e) Mail the envelope to the address for the county clerk located on the voter instruction sheet.

(4) The absentee ballot shall be received by the county clerk through U.S. mail by the time established by the general election laws for the closing of the polls in accordance with KRS 117.086(1) in order to be counted.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [~~SBE 46,~~] "Instructions for Faxing or Emailing an Absentee Ballot to a Qualified Kentucky Resident", SBE 46, June 2010 [~~(December 2005 edition)~~];

(b) "Official Elections Material - Electronic Transmission Sheet" [~~(2004 edition)~~];

(c) "Federal Post Card Application", Standard Form 76 (Rev. 10-2005);

(d) [~~SBE 46A,~~] "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Emailed an Absentee Ballot", SBE 46A, June 2010 [~~(December 2005 edition)~~]; and

(e) [~~SBE 46B,~~] "Voter Verification Sheet", SBE 46B, June 2010 [~~(December 2005 edition)~~].

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

This is to certify that this regulation is submitted with the concurrence of the Attorney General pursuant to KRS 117.079.

TREY GRAYSON, Chair
JACK CONWAY, Attorney General

APPROVED BY AGENCY: June 7, 2010
FILED WITH LRC: June 15, 2010 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA), 42 U.S.C. 1973ff, provides that each state shall use the official post card form for simultaneous voter registration application and absentee ballot application. The Military and Overseas Voter Empowerment Act of 2009 (MOVE), Public Law 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, balloting, and election materials and information. KRS 116.045(4)(c) provides that any person may register to vote or may change his or her party affiliation by means of the Federal Post Card Application if the person is a resident of Kentucky and a member of the Armed Forces, a dependent of members of the Armed Forces, or an overseas citizen. KRS 116.045(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.085(1)(b) mandates that the county boards of elections accept the Federal Post Card Application by facsimile and that the application may be used to register to vote and to apply for an absentee ballot. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the blank absentee ballot by facsimile.

(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the UOCAVA, MOVE, KRS 117.079, and KRS 117.085, to preserve the absentee voting rights of military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 authorize the Board to promulgate administrative regulations governing the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and provides multiple electronic methods for the named voters to complete the absentee voting process in accordance with UOCAVA and MOVE.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation provides for registering to vote and requesting an absentee ballot via facsimile expediting the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States. Such persons may have little notice of their location on election day or during the days of absentee voting and the regular delays in the mail service make it impractical to follow the normal methods for absentee voting.

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

(a) How the amendment will change the existing administrative regulation: This amendment provides for registering to vote and requesting an absentee ballot via facsimile either through FVAP or

directly to the voter as required by MOVE. This amendment also updates the most recent versions of the necessary forms, SBE 46, SBE 46A, SBE 46B, and Official Election Materials - Electronic Transmission Sheet.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to ensure that there is an adequate number of provisional ballots for voters of each political party at each precinct where a primary is held.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is necessary to provide faxing of elections materials to expedite the absentee voting process to military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States as required by MOVE.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the most reliable and convenient methods in which military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States can vote by absentee ballot.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and all county clerks.

(4) 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 to an existing administrative regulation: The county clerks will have use their facsimile machines to remain in contact with the voter or forward the election related materials to the FVAP Electronic Transmission Service for forwarding to the voter. The voters will have easy and unfettered access to electronic voting materials. The county clerks and the voters who are members of the Armed Forces deployed overseas or overseas citizens will benefit from the expedited absentee voting process established by this administrative regulation.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The costs for maintaining a facsimile machine are already provided in local budgets and faxing the voting materials through the FVAP Electronic Transmission Service minimizes the cost as opposed to faxing directly to a voter overseas.

(b) On a continuing basis: The costs associated with maintaining faxing machine are minimal and included in existing budgets.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment applies equally to all citizens.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government: Yes

(2) State what unit, part, or division of local government this administrative regulation will affect: All county clerks' offices.

(3) State the aspect or service of local government to which this administrative regulation relates: the conduct of elections and absentee voting.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

(a) Revenues: This administrative regulation will not generate any revenues for the local governments.

(b) Expenditures: The costs for maintaining a facsimile machine are already provided in local budgets and faxing the voting materials through the FVAP Electronic Transmission Service minimizes the cost as opposed to faxing directly to a voter overseas.

(c) Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff and 1973ff-1, the Uniformed and Overseas Citizen Absentee Voting Act and the Military and Overseas Voter Empowerment Act.

(2) State compliance standards: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General.

(3) Minimum or uniform standards contained in the federal mandate: This administrative regulation implements procedures for Kentucky counties to follow to provide for the use of the Federal Post Card Application (FPCA) for registering to vote and requesting an absentee ballot for military and overseas voters, to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, blank balloting, and election materials and information.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements that those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: None

STATEMENT OF EMERGENCY
31 KAR 4:140E

Nature of the emergency: The emergency amendment to this administrative regulation is being promulgated in response to the enactment of the Military and Overseas Voter Empowerment Act of 2009 (MOVE), codified at 42 U.S.C. 1973ff-1, and the provisions required to be available to military and overseas voters by the 2010 General Elections. This emergency amendment is being promulgated to ensure that the new procedures established by MOVE and provided for in this amendment comply with 42 U.S.C. 1973ff-1 requiring each state to provide multiple electronic methods by which military, overseas citizens, and their dependents may register to vote, request an absentee ballot, and receive the absentee ballot. This emergency amendment provides for a Free Access System for military and overseas voters to determine that their ballots have been delivered and received. This emergency amendment must be effective immediately to require Kentucky's election officials to participate prior to the fifty (50) day deadline established by KRS 117.085 and the forty-five (45) day deadline established by MOVE for the printing and delivery of all absentee ballots to military and overseas citizens who request or have requested absentee ballots prior to the 2010 General Election. This emergency amendment is also necessary to ensure that all 120 counties are uniformly accepting and processing the military and overseas voter requests by email. The reasons why an ordinary administrative regulation is not sufficient: An ordinary amendment is not sufficient because it will not be effective until after the fifty (50) day deadline established by KRS 117.085 and the forty-five (45) day deadline established by MOVE for the printing and delivery of absentee ballots to military and overseas voters. A delay in the enactment of this amendment may interfere with the constitutional right to vote of members of the military, their dependents, and overseas citizens. This emergency amendment shall be replaced by an ordinary amendment to the administrative regulation

filed with the Regulations Compiler. The ordinary amendment to this administrative regulation is identical to this emergency amendment to this administrative regulation.

STEVE BESHEAR, Governor
TREY GRAYSON, Chairman

KENTUCKY STATE BOARD OF ELECTIONS
(Emergency Amendment)

31 KAR 4:140E. Submitting a Federal Post Card Application and absentee ballot request electronically.

RELATES TO: KRS 116.995, 117.079, 117.085, 117.995, 119.265, 369.107, and 42 U.S.C. 1973

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.079, 42 U.S.C. 1973ff-1

EFFECTIVE June 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.~~] KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Military and Overseas Voter Empowerment Act of 2009, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, blank balloting, and election materials and information. 42 U.S.C. 1973ff-1(h) requires each state to develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot has been received by the county clerk. KRS 116.045(4)(c) provides that any person may register to vote or may change his or her party affiliation by means of the Federal Post Card Application if the person is a resident of Kentucky and a member of the Armed Forces, a dependent of members of the Armed Forces, or an overseas citizen. KRS 116.045(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.085(1)(b) mandates that the county boards of elections accept the Federal Post Card Application by facsimile and that the application may be used to register to vote and to apply for an absentee ballot. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the absentee ballot electronically. [~~The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. 1973ff, authorizes the Department of Defense to implement a voting assistance system for the purposes of expediting the absentee voting process for deployed members of the Armed Forces of the United States using existing technology. This administrative regulation implements a process for local elections officials to participate in the Department of Defense's system.~~]

Section 1. Definitions. (1) "Absentee ballot application" means the Federal Post Card Application, Standard Form 76[~~B~~], electronically sent to the county clerk [~~from FVAP~~].

(2) "FVAP" means the Federal Voting Assistance Program, an office within the Department of Defense responsible for administering UOCAVA and MOVE.

(3) "Instructions to voter sheet" means the "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Emailed [~~Electronically Sent~~] an Absentee Ballot," SBE 46A.

(4) "MOVE" means the Military and Overseas Citizen Empowerment Act, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1.

(5) "Registered voter" means a resident of Kentucky who is eligible to vote and is a:

(a) Military personnel serving on active duty outside the United States; or

(b) Other resident of Kentucky residing outside the United States.

(6) "Transmission sheet" means the Official Election Materials - Electronic Transmission Sheet.

(7) "UOCAVA" means the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff.[~~(5)~~]

(8)[~~(5)~~] "Voter verification sheet" means the SBE 46B, the form the registered voter signs and includes the voter assistance oath.

Section 2. (1) A county clerk [~~Any county clerk's office~~] that has online capabilities shall follow the process established by this administrative regulation in administering UOCAVA and MOVE [~~the Department of Defense's system through FVAP~~] for the electronic transmission of Federal Post Card Applications, [~~and~~] absentee ballot requests, and blank absentee ballots.

(2) The county clerk shall use the electronic mailing address provided or recognized by the Kentucky Department of Transportation to receive a voter's FPCA, to send a blank absentee ballot, and to send election related materials.

Section 3. Processing a Completed Application electronically. (1) If the county clerk receives notification of a voter's absentee ballot application [~~is received~~] electronically [~~from FVAP~~] less than seven (7) days before the applicable election, the county clerk shall not process the application.

(2) If the county clerk receives notification of a voter's completed absentee ballot application [~~is received~~] electronically [~~from FVAP~~] not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the absentee ballot application.

(3) The county clerk shall then verify the voter's eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare an electronic copy, in a manner prescribed by the State Board of Elections [~~FVAP~~], of the original blank absentee ballot. The original blank absentee ballot shall [~~is~~] then be marked "Emailed to {Military or Overseas} Voter[~~Electronically Sent to FVAP~~]" and retained.

(4) The original blank absentee ballot shall not be reused. The electronic copy of the original blank absentee ballot shall be sent electronically to the voter [~~FVAP~~], along with the transmission sheet, Instructions to voter sheet, and the voter verification sheet, to either the FVAP Electronic Transmission Service at the email address listed on the transmission sheet or directly to the voter at the email address provided on the voter's absentee ballot application.

Section 4. Voter's Instructions on Completing an [~~Electronic~~] Absentee Ballot Received Electronically [~~From FVAP~~]. (1) When a voter receives an absentee ballot electronically from the county clerk [~~FVAP~~], the voter shall print the absentee ballot, mark the absentee ballot, and seal it in an inner envelope.

(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter requires assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall print his or her name, voting address, and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope without obstructing[~~, but shall not obstruct~~] the address area.

(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot shall be required to be received, by 6 p.m. local time on Election Day, to the county clerk through the mail in order to be counted.

Section 5. Military and Overseas Voter Free Access System. (1) The State Board of Elections shall develop a system by which the voter may determine the date the county clerk delivered the blank absentee ballot to the voter and the date the voter's voted

ballot was received by the county clerk.

(2) The county clerk shall participate in the free access system developed by the State Board of Elections or create a similar system on the local level by which the requirements of 42 U.S.C. 1973ff-1(h) are fulfilled.

Section 6. If any person has knowledge of a failure to execute the duties established by this administrative regulation, the person shall contact the State Board of Elections or the Attorney General's Office to make a complaint of a violation in accordance with KRS 116.995, 117.995(2), or 119.265.

Section 7.[6.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Instructions for Faxing or Emailing an Absentee Ballot to a Qualified Kentucky Resident", SBE 46, June 2010;

(b) "Federal Post Card Application", Standard Form 76A (Rev. 10-2005);

(c) "Official Elections Material - Electronic Transmission Sheet"; (d)[(b) SBE 46A –] "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Electronically Sent an Absentee Ballot", SBE 46A, June 2010 [(August 2008 edition)]; and

(e)[(c) SBE 46B –] "Voter Verification Sheet", SBE 46B, June 2010 [(December 2005 edition)].

(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 p.m.

This is to certify that this regulation is submitted with the concurrence of the Attorney General pursuant to KRS 117.079.

TREY GRAYSON, Chair
JACK CONWAY, Attorney General
APPROVED BY AGENCY: June 7, 2010
FILED WITH LRC: June 15, 2010 at 10 a.m.
CONTACT PERSON: Kathryn H. Gabhart, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires the states to provide for the use of the Federal Post Card Application (FPCA) for registering to vote and requesting an absentee ballot for military and overseas voters. The Military and Overseas Voter Empowerment Act of 2009 (MOVE), Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, blank balloting, and election materials and information. 42 U.S.C. 1973ff-1(h) requires each state to develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot has been received by the county clerk. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the absentee ballot electronically and provides a free access system for voters to determine the status of their absentee ballots.

(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the UOCAVA, MOVE, KRS 117.079, and KRS 117.085, to preserve the absentee voting rights of military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 authorize the Board to promulgate administrative regulations governing the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and provides multiple electronic methods for the named voters to complete the absentee voting process and monitor that process in accordance with UOCAVA and MOVE.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation provides multiple methods for electronically registering to vote and requesting an absentee ballot and a free access system for the voter to use to monitor this process expediting the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States. Such persons may have little notice of their location on election day or during the days of absentee voting and the regular delays in the mail service make it impractical to follow the normal methods for absentee voting.

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

(a) How the amendment will change the existing administrative regulation: This amendment provides multiple methods for electronically registering to vote and requesting an absentee ballot as required by MOVE and provides for a free access system. This amendment also updates the most recent versions of the necessary forms, SBE 46, SBE 46A, SBE 46B, and Official Election Materials—Electronic Transmission Sheet.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide multiple electronic methods to expedite the absentee voting process to military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and a free access system as required by MOVE.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing multiple electronic methods to expedited absentee voting process to military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and a free access system as required by MOVE.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the most reliable and convenient methods in which military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States can vote by absentee ballot.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and all county clerks.

(4) 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 to an existing administrative regulation: The county clerks will have use their email addresses to remain in contact with the voter or forward the election related materials to the FVAP Electronic Transmission Service for forwarding to the voter. The voters will have easy and unfettered access to electronic voting materials. The county clerks and the voters who are members of the Armed Forces deployed overseas or overseas citizens will benefit from the expedited absentee voting process established by this administrative regulation.

(5) Estimate how much it will cost to implement this administrative regulation:

(a) Initially: The costs for the email addresses are already provided in local budgets and/or the Department of Transportation's budget. The Free Access System is being funded by the State Board of Elections with the use of Title II Help America Vote Act funding.

(b) On a continuing basis: The costs associated with maintaining email addresses are minimal and included in existing budgets. The maintenance of the Free Access System will be provided by

the use of Title II HAVA funding.

(6) The source of funding to be used for the implementation and enforcement of this administrative regulation: The costs for the email addresses are already provided in local budgets and/or the Department of Transportation's budget. The Free Access System is being funded by the State Board of Elections with the use of Title II Help America Vote Act funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all citizens.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government: Yes

(2) State what unit, part, or division of local government this administrative regulation will affect: All county clerks' offices. State the aspect or service of local government to which this administrative regulation relates: the conduct of elections and absentee voting.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

(a) Revenues: This administrative regulation will not generate any revenues for the local governments.

(b) Expenditures: The costs for the email addresses are already provided in local budgets and/or the Department of Transportation's budget. The Free Access System is being funded by the State Board of Elections with the use of Title II Help America Vote Act funding. Participation in the Free Access System is free to the counties.

(c) Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff and 1973ff-1, the Uniformed and Overseas Citizen Absentee Voting Act and the Military and Overseas Voter Empowerment Act.

(2) State compliance standards: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General.

(3) Minimum or uniform standards contained in the federal mandate: This administrative regulation implements procedures for Kentucky counties to follow to provide for the use of the Federal Post Card Application (FPCA) for registering to vote and requesting an absentee ballot for military and overseas voters, to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, blank balloting, and election materials and information, and provides a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot has been received by the county clerk.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

STATEMENT OF EMERGENCY
503 KAR 1:110E

KRS 13A.190(1)(a) provides that an emergency administrative regulation is one that must be placed into effect immediately in order to meet an imminent threat to public health, safety, and welfare or to protect human health and the environment. The Kentucky Law Enforcement Council is charged with the duty of establishing standards for the training and education of certified peace officers, who protect the citizens and enforce the laws of this Commonwealth. 503 KAR 1:110E provides the requirements for graduation from the Law Enforcement Basic Training Academy administered by the Department of Criminal Justice Training. The Kentucky Law Enforcement Council is charged with the duty of establishing training requirements in the Law Enforcement Basic Training Academy program of the Department of Criminal Justice Training. Since the Kentucky Law Enforcement Council only meets quarterly, the Training Academy curriculum was not completed and approved until the February 2010 meeting. Pursuant to the requirements of KRS 13A.190(5), an ordinary administrative regulation will not suffice since law enforcement training must adapt quickly to changing standards for emergency services in Kentucky and implement those standards as soon as possible. It is essential that law enforcement officers are properly trained so that public safety is increased and lives are saved. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 10, 2010.

STEVEN L. BESHEAR, Governor
KEITH R. CAIN, Chair

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Emergency Amendment)

503 KAR 1:110E. Department of Criminal Justice Training basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (f), 15.386(1), 15.404(1), 15.440(1)(d)

STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h), 15.334(3)

EFFECTIVE: June 10, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund and for maintenance of basic training records.

Section 1. Basic Training Graduation Requirements. To graduate from the department's basic training course, a recruit shall:

(1) Successfully complete a minimum of 768 hours of training, based upon the curriculum approved by the council in accordance with KRS 15.330 and 503 KAR 1:090;

(2) Attain:

(a) A seventy (70) percent overall score on all graded training areas covered during the course for which a numerical score is assigned. A recruit who does not achieve a seventy (70) percent overall score shall be considered to have failed basic training; and

(b) An eighty (80) percent overall score in First Aid/CPR/AED. A recruit who does not achieve an eighty (80) percent overall score shall be considered to have failed basic training;

(3) Pass all training areas covered during the course for which a pass or fail designation is assigned. A recruit who does not pass all pass or fail training areas shall be considered to have failed basic training; and

(4) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training area for which they were assigned.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section.

(1) Physical training entry requirements.

(a) Within five (5) days from the first date of the basic training course, the recruit shall be tested in the following events, in the order listed, [~~successfully complete each of the following events~~] as instructed and evaluated by qualified department instructors:

1. Bench press [~~One (1) repetition maximum (RM) bench press equal to sixty-four (64) percent of the recruit's body weight~~];

2. Sit-ups [~~Eighteen (18) sit-ups in one (1) minute~~];

3. 300 meter run [~~in sixty-five (65) seconds~~];

4. [~~Twenty (20)~~] Pushups; and

5. One and five-tenths (1.5) mile run [~~in seventeen (17) minutes twelve (12) seconds~~].

(b) A recruit shall be considered to have passed the physical training entry requirements 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 paragraph (a) of this subsection:

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

a. 9 points - Recruit must bench press at least fifty-three and three-tenths (55.3) percent of body weight;

b. 9.5 points - Recruit must bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;

c. 10 points - Recruit must bench press at least sixty-four (64) percent of body weight;

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

e. 11 points - Recruit must bench press at least seventy-three (73) percent or more of body weight;

2. Sit-ups:

a. 9 points - Recruit must complete at least thirteen (13) repetitions in one (1) minute;

b. 9.5 points - Recruit must complete at least sixteen (16) repetitions in one (1) minute;

c. 10 points - Recruit must complete at least eighteen (18) repetitions in one (1) minute; and

d. 11 points - Recruit must complete nineteen (19) repetitions or more in one (1) minute;

3. 300 meter run:

a. 9 points - Recruit must complete in sixty-eight (68) seconds or less;

b. 9.5 points - Recruit must complete in sixty-seven (67) seconds or less;

c. 10 points - Recruit must complete in sixty-five (65) seconds; and

d. 11 points - Recruit must complete in less than sixty-five (65) seconds;

4. Push-ups:

a. 9 points - Recruit must complete at least fourteen (14) repetitions in two (2) minutes;

b. 9.5 points - Recruit must complete at least seventeen (17) repetitions in two (2) minutes;

c. 10 points - Recruit must complete at least twenty (20) repetitions in two (2) minutes;

d. 10.5 points - Recruit must complete at least twenty-three (23) repetitions in two (2) minutes; and

e. 11 points - Recruit must complete twenty-five (25) repetitions or more in two (2) minutes; and

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

a. 9 points - Recruit must complete in at least 1,076 seconds (17:56);

b. 9.5 points - Recruit must complete in at least 1,054 seconds (17:34) or less;

c. 10 points - Recruit must complete in at least 1,032 seconds (17:12) or less;

d. 10.5 points - Recruit must complete in at least 1,004 seconds (16:44) or less; and

e. 11 points - Recruit must complete in less than 975 seconds (16:15) or less.

(c) A recruit shall:

1. Not be awarded more than eleven (11) points or less than nine (9) points in any one (1) of the five (5) physical ability events; and

2. Be deemed to have failed the physical ability test if he or she fails to achieve at least:

a. A total score of fifty (50) points; or

b. Nine (9) points on any one (1) physical training event.

(e) Retest.

1. A recruit 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, except that 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.

2. A recruit that obtains a point value for each event, but does not obtain an overall score of fifty (50), shall be retested on the physical training entry test again, in its entirety.

3. A retest shall not occur any sooner than forty-eight (48) hours or any later than seventy-two (72) hours from the date of the initial test attempt.

4. [~~If a recruit passes all events when participating in the physical training entry test, the recruit shall have met the physical training entry requirements.~~

~~(c) Retest. If a recruit fails to pass all events when participating in the physical training entry test:~~

~~1. The recruit shall retest in the failed events no earlier than forty-eight (48) hours from the date of the entry test;~~

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

5.[~~3.~~] If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training entry requirements; and

6.[~~4.~~] If the recruit does not pass all previously failed events on the date of the retest, the recruit shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

(2) Physical training graduation requirements.

(a) In order to graduate, the recruit 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 entry test score requirements in subsection (1)(b) of this section, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols: [~~Within five (5) days from the final date of the basic training course, the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:~~]

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

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

3. 300 meter run in sixty-five (65) seconds;

4. Pushups. Twenty-five (25) pushups; and

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

(b) If a recruit passes all events when participating in the physical training graduation test, the recruit shall have met the physical training graduation requirements.

(c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

1. The recruit shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;

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

3. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training graduation requirements; and

4. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall be considered to have failed basic training.

(3) Physical training midpoint test. During week ten (10) [~~nine (9)~~] of basic training, the recruits shall be administered the events of the physical training requirements for purposes of reporting their progress to their respective law enforcement agencies.

Section 3. Failure and Repetition of Basic Training. (1) Failure of Training.

(a) A recruit that is removed from basic training due to a training segment or area failure prior to the successful completion of DUI Detection shall:

1. Be required to repeat the entire basic training course; and

2. Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030.

(b) If a recruit fails a segment or area after the completion of DUI Detection the recruit shall:

1. Be removed from the basic training class;

2. Reenter basic training in a subsequent class that has the first available vacancy; and

3. Start the training at the beginning of the training area or segment that the recruit did not successfully complete.

(c) [~~If a recruit fails the Practical Examination I, Practical Examination II, or Academic Examination 5: Final Exam, the recruit shall reenter basic training at the conclusion of DUI Detection.~~

~~(d)~~] Upon the recruit's return, the recruit shall attend and participate in the area or segment, but shall not be retested in the training area or segment that was previously passed.

1. In accordance with 503 KAR 3:030, Section 6(2), the recruit's hiring agency shall prepay to the department the full tuition, room, and board costs of repeating the training area which was failed. The hiring agency may recover these costs of repeating the training area from its recruit; and

2. If the training area is successfully completed, the recruit shall continue with the remainder of the basic training course.

(2) Failure of the physical training graduation requirements. A recruit who fails the physical training graduation requirement in Section 2(2) of this administrative regulation:

(a) Shall not graduate with the recruit's basic training class;

(b) Shall be permitted to retest with the very next basic training class; and

(c) Upon successful completion, may graduate with that class.

(3) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

(a) Be required to repeat basic training in its entirety; and

(b) Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

Section 4. Basic Training Curriculum. The Basic training curriculum shall include the following areas:

(1) Administration and testing;
(2) Telecommunications (MDT);
(3) Legal subjects;
(4) Physical training;
(5) Defensive tactics;
(6) Patrol;
(7) Vehicle operations;
(8) Firearms;
(9) Criminal investigation;
(10) D.U.I./Field sobriety testing;
(11) Breath testing;
(12) Practical [~~Modular~~] evaluation/testing;
(13) First Aid/C.P.R./A.E.D.; and
(14) Homeland security.

Section 5. Examinations. (1) A recruit shall be examined in the following [~~segments and~~] six (6) areas of basic training:

(a) Area I, composed of the following:

1. Academic Examination 1 [~~segment~~];
2. Vehicle Operations: Day Range;
3. Work Zone Safety;
4. Criminal Justice Information System: Mobile Data Terminal (CJIS:MDT); and
5. Academic Examination 2;

(b) Area II:

1. Breath Test Operator: Practical;
2. Breath Test Operator: Written;
3. DUI: Practical; and
4. DUI: Written;

(c) Area III:

1. Cardiopulmonary Resuscitation (CPR): Practical;
2. Cardiopulmonary Resuscitation (CPR): Written;
3. Automated External Defibrillation (AED): Written;
4. First Aid: Practical;
5. First Aid: Written; and
6. Practical Examination 1;

(d) Area IV:

1. Academic Examination 3;
2. Handgun: Day;
3. Handgun: Low Level Light; and
4. Academic Examination 4;

(e) Area V:

1. Long Gun: Shotgun Day;
2. Long Gun: Shotgun Low Level Light;
3. Long Gun: Rifle Day; and
4. Long Gun: Rifle Low Level Light;

(f) Area VI:

1. Defensive Tactics: Written;
2. Defensive Tactics: Practical;
3. Academic Examination 5: Final Exam; and
4. Practical Examination 2. [~~Academic Examination 1 (Segment 2);~~

~~3. Academic Examination 1 (Segment 3); and~~
~~4. Academic Examination 1 (Segment 4);~~
~~5. Academic Examination 1 (Segment 5);~~
~~(b) Area II:~~
~~1. Firearms, including:~~
~~a. Day handgun;~~
~~b. Night handgun;~~
~~c. Day Shotgun; and~~
~~d. Low-light shotgun qualification;~~
~~2. Performance driving evaluation, practical; and~~
~~3. Defensive tactics shall include a:~~
~~a. Practical test; and~~
~~b. Written certification test;~~
~~(c) Area III:~~
~~1. Breath test segment, including:~~
~~a. Practical examination; and~~
~~b. Written examination; and~~
~~2. DUI detection segment, including:~~
~~a. Practical examination; and~~
~~b. Written examination;~~
~~(d) Area IV: American Red Cross certification in the following:~~
~~1. Professional rescuer CPR automated external defibrillation segment; and~~
~~2. First aid segment;~~
~~(e) Area V: Mobile Data Terminal Certification segment; and~~
~~(f) Area VI: Practical exams:~~
~~1. Practical Examination I; and~~
~~2. Practical Examination II.~~]

(2) A recruit shall be permitted one (1) reexamination in each of the six (6) areas of basic training.

(3) A recruit who fails an examination, other than defensive tactics or the Practical Examinations, shall not be reexamined:

(a) Earlier than forty-eight (48) hours from the original examination; or

(b) Later than:

1. Ten (10) days after the original examination. A recruit may submit a written request to the branch manager for an additional five (5) days in which to take the reexamination; and

2. The last scheduled day of the basic training course.

(4) Failure of a defensive tactics examination or Practical Examination II.

(a) If the failure occurs prior to the last scheduled day of defensive tactics training, the recruit shall not be reexamined earlier than the last scheduled day of defensive tactics training.

(b) If the failure occurs on the last scheduled day of defensive tactics training, the recruit shall not be reexamined:

1. Earlier than twenty-four (24) hours from the original examination; or

2. Later than the last scheduled day of the basic training course.

(c) If a recruit fails Practical Examination II, the recruit may be reexamined:

1. Immediately; or

2. No later than the last scheduled day of the basic training course.

(5) A recruit shall be considered to have failed basic training if the recruit:

(a) Fails a reexamination in accordance with subsection (2) of this section; or

(b) Fails two (2) examinations in the same area of basic training.

Section 6. Absence. (1) A recruit may have excused absences from the course with approval of the director of the certified school or his designee.

(2) An excused absence from the course which causes a recruit to miss any of the 768 hours of basic training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of Basic Training. (1) If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:

(a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and

(b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

(2) If a recruit is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the recruit shall be permitted to complete the unfinished areas of the course within 180 days immediately following his or her return from active duty service.

Section 8. Termination of Employment while Enrolled. If, while enrolled in the basic training course, a recruit's employment as a police officer is terminated by dismissal, and the recruit is unable to complete the course, the recruit shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall forward a final roster indicating the pass or fail status of each recruit to the council.

(2)[~~, for each recruit who completes the course, complete and send the following forms to the council:~~

~~(a) DOCJT Form 68-1 (Application for Training Credit);~~

~~(b) DOCJT Form 29-1 (Agency Requests for Training); and~~

~~(c) DOCJT Form 29-1PA (Agency Requests for Training - Pay Agency Form).~~

~~(2) The department shall send a copy of the DOCJT Form 68-1 to the:~~

~~(a) Council for verification; and~~

~~(b) DOCJT Records Section Supervisor.~~

~~(3)~~] All training records required for fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund administrator upon written request.

(3)[~~(4)~~] All training records shall be:

(a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and

(b) Maintained in accordance with applicable provisions of KRS Chapter 171. [~~Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "DOCJT Form 68-1 - Application for Training Credit", 8/22/02;~~

~~(b) "DOCJT Form 29-1 - Agency Requests for Training", 10/20/06; and~~

~~(c) "DOCJT Form 29-1PA - Agency Requests for Training - Pay Agency Form", 7/12/06.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

KEITH R. CAIN, Chair

APPROVED BY AGENCY: June 9, 2010

FILED WITH LRC: June 10 at 3 p.m.

CONTACT PERSON: Steve Lynn, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475, phone (859) 622-3073.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the curriculum and training requirements for those attending the Department of Criminal Justice Training Law Enforcement Basic Training academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility, as established in KRS 15.330, to approve law enforcement officers as having met the requirements for completion of law enforcement training, specifically basic training which is necessary for participation in the Kentucky Law Enforcement Foundation Program Fund (KLEFPF), and peace officer certification pursuant to KRS 15.380 through 15.404.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992. This administrative regulation is required to establish graduation standards for DOCJT basic training, which is necessary for the administration of KLEFPF (KRS 15.410 through 15.510), and peace officer certification (KRS 15.310, and 15.380 through 15.402).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for graduation from DOCJT basic training, the successful completion of which is necessary before an officer may achieve active peace officer certification, or participate in KLEFPF.

(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 does the following:

1. Amends the physical ability tests that are administered to police recruits entering the basic training academy;

2. Amends the subjects, training areas, and tests administered in law enforcement basic training; and

3. Deletes forms that are no longer needed by the Department of Criminal Justice Training and Kentucky Law Enforcement Council.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to update training subjects and testing in basic training.

(c) How the amendment conforms to the content of the autho-

rizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992. This administrative regulation is required to establish graduation standards for DOCJT basic training, which is necessary for the administration of KLEFPF (KRS 15.410 through 15.510), and peace officer certification (KRS 15.310, and 15.380 through 15.402).

(d) How the amendment will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for graduation from DOCJT basic training, the successful completion of which is necessary before an officer may achieve active peace officer certification, or participate in KLEFPF.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth that utilize DOCJT basic training, which is approximately 400 agencies, including most state, county and local agencies, but excluding the Kentucky State Police, and the Lexington, Louisville, and Jefferson County Police Departments.

(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 agencies should not experience any detrimental impact. They should be benefited by receiving an officer-graduate who is better trained.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive a better trained officer upon graduation.

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

(a) Initially: No additional costs.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(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 should be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all divisions of state or local government that employ peace officers who are required by KRS 15.380 to be certified, including city and county police departments, and county sheriffs' offices. All new city, county, and state law enforcement are required to attend and complete law enforcement basic training.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), 15.330(1)(a) and (h), and 15.380.

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? There should be no additional costs to the KLEC, DOCJT, or the agencies that are affected by this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Costs are expected to remain the same.

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

STATEMENT OF EMERGENCY
810 KAR 1:009E

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 authorizes the Kentucky Horse Racing Commission to regulate the conditions under which thoroughbred racing shall be conducted in the Commonwealth of Kentucky and to establish the safety standards for jockeys. KRS 230.260(14) states as follows: "The [commission] shall promulgate administrative regulations establishing safety standards for jockeys, which shall include the use of rib protection equipment."

This emergency regulation is necessary to prevent an imminent threat to the health, safety, and welfare of jockeys and other participants in horse racing in the Commonwealth. Safety vests save lives and reduce other types of catastrophic bodily injury. The current regulation is based on outdated safety data. Thus, the vests currently permitted are not providing adequate protection from death or serious bodily injury. As jockeys are presently riding and undertaking risk of bodily injury, an emergency regulation will immediately create a safer riding environment and prevent injuries.

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.

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amendment)

810 KAR 1:009E. Jockeys and apprentices.

RELATES TO: KRS 230.215, EO 2009-535[~~2008-668~~]

STATUTORY AUTHORITY: KRS 230.215(2), 230.260, EO 2009-535[~~2008-668~~]

EFFECTIVE: June 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission[~~authority~~] to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260 authorizes the commis-

sion[~~authority~~] to promulgate administrative regulations that regulate conditions under which thoroughbred racing shall be conducted in Kentucky and to establish safety standards for jockeys. EO 2009-535[~~2008-668~~], effective June 12, 2009[~~July 3, 2008~~], 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 requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey, who has not ridden in a race previously, may ride in three (3) races before applying for a license as a jockey or apprentice jockey if:

(1) The person is a licensed stable employee, assistant trainer, or trainer with at least one (1) year of service with a racing stable;

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship, as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions, to be permitted the probationary mounts;

(3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;

(4) The stewards determine that the person:

(a) Intends to become a licensed jockey;

(b) Possesses the physical ability to be a jockey; and

(c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race; and

(5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 1:025, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;

(2) Shall have served at least one (1) year with a racing stable;

(3) Shall have ridden in at least three (3) races; and

(4) Shall, if required by the stewards, to protect the health and safety of the jockey, other jockeys, the horses, and the welfare of the betting public provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. (1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefore, shall:

(a) Be approved by the stewards as to competency of horsemanship, as demonstrated by meeting the requirements in Section 1(2), (3), and (4)(b) and (c) of this administrative regulation;

(b) Be granted an amateur jockey's license; and

(c) Have his amateur status duly noted on the daily race program.

(2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. (1) Any person sixteen (16) years of age or older, who has not been licensed previously as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

(a) Ten (10) pounds until he has ridden five (5) winners;

(b) Seven (7) pounds until he has ridden an additional thirty-five (35) winners;

(c) If he has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year; and

(d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year, or until the 40th winning mount whichever occurs first.

(2)(a) After the completion of conditions in subsection (1) of this section, a contracted apprentice may claim three (3) pounds for one (1) year if riding horses owned or trained by his original contract employer if his contract has not been transferred or sold since his first winner.

(b) The original contract employer shall be the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(c) Apprentice allowance shall not be claimed for a period in excess of two (2) years from the date of the rider's fifth winner unless an extension has been granted in accordance with subsection (4) of this section.

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years.

(a) These contracts shall be:

1. Approved by the stewards;

2. Filed with the commission; and

3. Binding in all respects on the parties to the contract.

(b) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate.

(4) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disablement, attendance in an institution of secondary or higher education, restrictions on racing, or other valid reason, the commission, upon recommendation of the stewards and after consultation with the racing entity which approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. (1) All contracts between an employer owner or trainer and employee rider shall be subject to 810 KAR Chapter 1.

(2) All riding contracts for terms longer than thirty (30) days, and any amendments, cancellation, or transfer, shall be in writing with the signatures of the parties notarized, and shall be approved by the stewards and filed with the commission.

(3) The stewards shall approve a riding contract and permit parties to participate in racing in this state if the stewards find that:

(a) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of the execution of the contract;

(b) The contract employer possesses the character, ability, facilities, and financial responsibility conducive to developing a competent race rider; and

(c) If it is a contract for an apprentice jockey, the contract provides for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from the date of execution.

Section 6. Restrictions as to Contract Riders. A rider shall not:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer; and

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. (1) Any rider not prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer.

(2) These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission.

(3) Any rider employed by a racing stable on a regular salaried basis shall not ride against the stable which employs him.

(4) An owner or trainer shall not employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The fee to a jockey, in the absence of special agreement to the contrary, shall be as follows:

(a) Purse $599 and under: winning mount, $33; second place mount, $33; third place mount, $33; losing mount, $33.

(b) Purse $600 to $699: winning mount $36; second place mount, $33; third place mount, $33; losing mount, $33.

(c) Purse $700 to $1,499: winning mount, ten (10) percent of win purse; second place mount, $33; third place mount, $33; losing mount, $33.

(d) Purse $1,500 to $1,999: winning mount, ten (10) percent of win purse; second place mount, $35; third place mount, $33; losing mount $33.

(e) Purse $2,000 to $3,499: winning mount, ten (10) percent of win purse; second place mount, $45; third place mount, $40; losing mount, $38.

(f) Purse $3,500 to $4,999: winning mount, ten (10) percent of win purse; second place mount, $55; third place mount, $45; losing mount, $40.

(g) Purse $5,000 to $9,999: winning mount, ten (10) percent of win purse; second place mount, $65; third place mount, $50; losing mount, $45.

(h) Purse, $10,000 to $14,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $50.

(i) Purse, $15,000 to $24,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $55.

(j) Purse, $25,000 to $49,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $65.

(k) Purse, $50,000 to $99,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $80.

(l) Purse, $100,000 and up: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $105.

(2) A jockey fee shall be considered earned by a rider if he is weighed out by the clerk of scales, with the following exceptions:

(a) If a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for the race;

(b) If a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, reasonable cause; or

(c) If a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or the commission, after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards due to circumstances under which a jockey could not reasonably be expected to be physically present at the required time, A rider shall not be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards or the clerk of scales due to circumstances under which a jockey could not reasonably be expected to ride; and upon arrival shall report to the clerk of scales his engagements. If a rider fails for any reason to arrive in the jockey room no later than one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. While a rider is outside of the jockey room, a rider shall not have contact or communication with any person other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room to conduct specific business previously approved by the stewards so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and when weighing out, the rider shall declare overweight, if any.

(2)(a) A rider shall not pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; and

(b) A rider shall not pass the scale with more than five (5) pounds overweight.

(3) A horse shall not be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, rider's safety helmet, and rider's safety vest shall not be included in a rider's weight.

Section 13. Wagering. A rider shall not place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. (1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened.

(2) Each jockey shall wear:

(a) The cap and jacket racing colors registered in the name of the owner of the horse he is to ride;

(b) Stock tie;

(c) White or light breeches;

(d) Top boots;

(e) A safety vest and safety helmet that meet[~~meets~~] the standards set forth in (4) and (5) below, respectively[~~"Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM F1937-04"~~]; and

(f) A number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.

(3) [~~A safety vest shall not weigh more than two (2) pounds.~~

~~(4)~~] The clerk of scales and attending valet shall be held jointly

responsible with a rider for his neat and clean appearance and proper attire.

(4)[~~(5)~~] A jockey mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker indication that it meets one of the following safety standards:

(a) ASTM International Standard, ASTM F1163-04a;

(b) British Standards, BS EN 1384:1997 or PAS 015:1999; or

(c) Australian/New Zealand Standard, AS/NZS 3838:2006.

(5) A jockey mounted on a horse or stable pony on any location under the jurisdiction of the commission shall wear a safety vest at all times. The safety vest shall not weigh more than two (2) pounds and must comply with one (1) of the following minimum standards:

(a) British Equestrian Trade Association (BETA):2000 Level 1;

(b) Euro Norm (EN) 13158:2000 Level 1;

(c) American Society for Testing and Materials (ASTM) F2681-08;

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or

(e) Australian Racing Board (ARB) Standard 1.1998.

Section 15. Advertising. (1) A jockey shall not wear advertising or promotional material of any kind (whether for a nonprofit or for-profit entity) on clothing within one (1) hour before or after[~~of or during~~] a race, unless:

(a)1.a. The material advertises or promotes the Jockey's Guild in the form of the picture of a jockey's boot or the picture of a wheelchair, with no additional picture or logo;

b. The material advertises or promotes the[~~is the National Thoroughbred Racing Association (NTRA)~~] Permanently Disabled Jockey's Fund in the form of the pictures of its logo, with no additional picture or logo; or

c. The picture or logo has previously been approved by the current owner, association, and the stewards under the process set forth in this administrative regulation, and this approval is reflected in the commission's official records; and

2. The material complies with the size restrictions of subsection (2)(b) of this section; or

(b) The following criteria are met:

1. The material meets the advertising standards listed in subsection (2) of this section; and

2. Written approval by the following is submitted to the commission as provided herein;

(a) The managing owner of the horse, or authorized agent of the managing owner who acts with actual authority and has been specifically authorized in writing to sign the written approval on behalf of the managing owner. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form. If the owner is a business entity, in lieu of filing the "Authorized Agent License Application" form, the owner may file duly adopted resolutions of the business entity authorizing the agent to act on its behalf and remit the $25 license application fee.

(b) The jockey riding the horse or the authorized agent of the jockey who acts with actual authority and has been specifically authorized in writing to sign the written approval on behalf of the jockey. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form;

(c) The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section;

(d) The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections (2)(b) and (3) of this section.

3. Written approval required pursuant to subjection (1)(b) shall be evidenced by completion and return to the commission of the "Request to Wear Advertising and Promotional Materials" form. The form shall be completed and submitted to the stewards not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn. No other form of approval shall be accepted by the commission.[~~The jockey obtains the written approval established in subsection (4) of this section.~~]

(2) Advertising or promotional material displayed on jockey clothing shall:

(a) Not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association race or to the race meet in progress; and

(b) Comply with the following size restrictions;

1. A maximum of thirty-two (32) square inches on each thigh of the pants on the outer side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine;

2. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and

3. A maximum of six (6) square inches on the front center of the neck area (on a turtleneck or other undergarment).

(3) A sponsorship shall not be permitted by a person or entity whose message, business reputation, or ongoing business activity may be considered as obscene or indecent to a reasonable person.

(4)(a) The party presenting the advertising or promotional opportunity to the owner and jockey (including without limitation, the owner and jockey) shall disclose in writing all material terms, including financial, regarding the advertising or promotional opportunity to the owner, jockey, and the commission. The division of proceeds from any advertising or promotional material placed in accordance with this regulation is subject to agreement between the owner and the jockey. The agreement between the owner and jockey shall be made in writing on the "Owner/Jockey Advertising or Promotional Materials Agreement" and submitted to the commission not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn. No other form of agreement or contract shall be used. Any party who fails to comply with this or any other provision provided in this regulation may be subject to penalties by the commission in accordance with 810 KAR 1:025, 810 KAR 1:028, and as otherwise permitted by law.[~~For advertising or promotional material addressed in subsection (1)(b) of this section, approval in writing of all three (3) of the following shall be required:~~

~~1. The managing owner of the horse, or the owner's duly authorized agent;~~

~~2. The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section; and~~

~~3. The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections 2(b) and (3) of this section.~~

~~(b) Written approval shall be evidenced by completion and return of the "Request to Wear Advertising and Promotional Materials." The form shall be completed and submitted to the stewards not later than the time of entry of the subject race.~~]

(5) As a condition for approval of advertising or promotional material, either the owners, the stewards, or the licensed racing association may require a personal viewing of the proposed material as it is to be displayed, to determine that the requirements of this section are met.

(6) This administrative regulation shall not prohibit the sponsor of a licensed racing association race or race meeting from displaying advertising or promotional material on an association saddlecloth if it does not interfere with the clear visibility of the number of the horse.

(7) Advertising content other than that approved in this administrative regulation shall not be permitted.

(8) This administrative regulation shall not infringe upon or limit the common law rights of a racing association to eject or exclude persons, licensed or unlicensed, from association grounds, or to apply the association's internal rules regarding other forms of advertising not addressed in this or any other applicable statute or regulation, provided such internal rules have been previously filed with and approved by the commission or its duly authorized representative[~~or to apply the association's internal rules regarding advertising~~].

Section 16. Viewing Films or Tapes of Races. (1) Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race.

(2) The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves at the time designated by the stewards to view the patrol films or video tapes of races.

(3) Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

Section 17. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM [~~F1937-04~~]"; [~~and~~]

(b) "Request to Wear Advertising and Promotional Material", KHRC 009-01 (5-10)[~~March 2005~~].

(c) "Authorized Agent License Application", KHRC 009-02, 5/10; and

(d) "Owner/Jockey Advertising or Promotional Materials Agreement", KHRC 009-03, 5/10.

(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, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission[~~Authority~~] Web site at http:\\www.khrc.ky.gov/.

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

APPROVED BY AGENCY: June 8, 2010

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

CONTACT PERSON: Susan Bryson 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 Bryson Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth restrictions and requirements regarding the participation of jockeys in horse racing.

(b) The necessity of this administrative regulation: The regulation is necessary to protect the health and safety of jockeys and other human and equine participants in horse racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky. KRS 230.260(14) requires the Kentucky Horse Racing Commission to promulgate regulations establishing safety standards for jockeys, including use of safety vests. This regulation establishes restrictions and requirements concerning the activities of jockeys during thoroughbred race meetings and requires use of certified and tested safety vests.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation gives detailed guidance as to what practices and equipment can and cannot be used by jockeys.

(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 updated provisions concerning the safety vests required to be used by jockeys at locations under the jurisdiction of the commission. The amendment allows the use of several safety vests that provide adequate protection for jockeys.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that jockeys wear proper protective safety vests at locations under the jurisdiction of the commission.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the commission broad authority to promulgate regulations governing horse racing. KRS 230.260(14) requires the Kentucky Horse Racing Commission to promulgate regulations establishing safety standards for jockeys, including use of safety vests. This amendment addresses an important issue concerning jockey safety, the use of safety vests.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further the goal of securing the safety and welfare of jockeys at locations under the jurisdiction of the Commission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 100 jockeys engaged in thoroughbred racing who are licensed by the Kentucky Horse Racing Commission. The jockeys will be required to comply with the new safety vest rules.

(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: Jockeys and companies manufacturing safety vests will be required to conform to the new requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The welfare of jockeys and other human and equine participants in horse racing will be enhanced by ensuring that proper safety vests are worn at locations under the jurisdiction of the commission.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning safety vests apply equally to all participants in horse racing.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation will not impose additional costs upon any government agency.

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

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? 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:

STATEMENT OF EMERGENCY
810 KAR 1:026E

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. Kentucky Revised Statute 230.260 vests the Kentucky Horse Racing Commission with jurisdiction and supervision over all persons on association grounds. Kentucky Revised Statute 230.215 grants plenary power to the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which horse racing shall be conducted in the Commonwealth.

This emergency regulation is necessary to prevent an imminent threat to the health, safety, and welfare of persons who are mounted on and handle horses at racing associations in the Commonwealth. Safety vests save lives and reduce other types of catastrophic bodily injury. The current regulation with regards to safety vests allows use of safety vests based on outdated safety data. Thus, the vests currently permitted are not providing adequate protection from death or serious bodily injury. Moreover, the current regulation requires only persons who exercise horses and accompany horses to the starting gate to wear safety vests. The amended regulation requires any person mounted on a horse or stable pony as well as all assistant starters and persons handling a horse in a starting gate to wear a safety vest at all times. As the persons addressed in the amendment are presently riding and undertaking risk of injury, an emergency regulation will immediately create a safer riding environment and prevent injuries.

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.

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amendment)

810 KAR 1:026E. Racing associations.

RELATES TO: KRS 230.215(2), 230.225(1), 230.260(8), EO 2009-535[~~2008-668~~]

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(1), 230.260(8), EO 2009-535[~~2008-668~~]

EFFECTIVE: June 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.225(1), and 230.260(8) require the commission[~~authority~~] to promulgate administrative regulations establishing conditions governing horse 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.[~~EO 2008-668, effective July 3, 2008, 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 requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track. (1) The grounds and facilities of an association shall be maintained in a manner that provides for the:

(a) Comfort and safety of patrons, employees, and other persons whose business requires their attendance; and

(b) Health and safety of horses that are stabled, or exercise, or entered to race at the association.

(2) The grounds and facilities of an association shall be:

(a) Neat and clean;

(b) Painted; and

(c) In good repair.

(3) An association shall have implements adequate to maintain a uniform track, weather conditions permitting.

Section 2. Results Boards, Totalizators Required. An association shall provide and maintain mechanically operated totalizators and electronic boards that show odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. (1) An association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip.

(2) An association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use.

(3) An association shall provide for periodic inspections of the starting gates.

Section 4. Stabling. (1) An association barn and stall shall be:

(a) Constructed of fire-resistant material;

(b) Clean, sanitary, and equipped for adequate drainage; and

(c) Maintained in good repair.

(2)(a) Prior to the opening of a race meeting, the commission shall submit to the racing secretary a list of locations of approved off-track stabling facilities from which horses shall be permitted to race.

(b) The locations shall be considered association grounds.

Section 5. Stands for Officials. (1) An association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials.

(2) The stands and their locations shall be approved by the commission.

(3) The floor of patrol judge stands shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. An association shall have:

(1) Red and white quarter poles;

(2) Green and white eighth poles; and

(3) Black and white 16th poles.

Section 7. Lighting. (1) An association shall provide and maintain flood lights that provide adequate illumination in the stable area and parking area.

(2) If an association conducts night racing, it shall provide adequate track lighting.

Section 8. Facilities for Stable Employees. (1) An association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities, which shall include showers, toilets, and wash basins for stable employees.

(2) Personnel shall not be permitted to sleep in a stall or barn loft.

Section 9. Facilities for Jockeys. (1) An association shall provide and maintain adequate facilities for jockeys scheduled to ride each day.

(2) The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins,

mirrors, arrangements for safekeeping of apparel and personal effects, and snack bar.

Section 10. Facilities for Commission. (1) An association shall provide adequate office space for the commission on its grounds.

(2) An association shall provide the following to the commission:

(a) A season box, marked "Kentucky Horse Racing Commission", of six (6) to eight (8) seats; and

(b) A number of parking places sufficient for the commission and commission staff.

(3) An association shall honor for access to preferred parking facilities and other areas on its grounds a commission or Association of Racing Commissioners International ring, lapel button, or automobile emblem.

Section 11. Sanitary Facilities for Patrons. An association shall, on every racing day, provide sanitary toilets and wash rooms, and free drinking water adequate for the number of patrons and persons having business at the association that comply with applicable statutes, administrative regulations, codes or ordinances.

Section 12. Manure Removal. (1) An association shall provide and maintain manure pits of the size and construction adequate to handle refuse from stalls.

(2) The contents of the manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo Finish Cameras. (1) An association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races.

(2) One (1) of the photo finish cameras shall be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges the number of prints of finishes requested.

(3) An association shall maintain a one (1) year file of all photo finishes.

Section 14. Patrol Films or Video Tapes. (1) During a race meeting, an association shall provide and maintain personnel and equipment necessary to record and produce motion pictures or video tapes that clearly record each race from start to finish.

(2) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(3)(a) A film and video tape shall be:

1. Retained and secured by an association for at least one (1) year; and

2. Made available to the commission and stewards upon demand.

(b) Upon order of the stewards, a visual record of a race that has raised a question, dispute, or controversy shall be filed with the commission.

(4) Films and video tapes shall be made available:

(a) For viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed; and

(b) To members of the press.

Section 15. Ambulances. (1) An association shall provide and maintain at least one (1) man-ambulance and one (1) horse-ambulance whenever horses are permitted to exercise or race.

(2) An ambulance shall be:

(a) Equipped;

(b) Manned;

(c) Ready for immediate duty; and

(d) Located at an entrance to the racing strip.

Section 16. (1) Except as provided by subsection (2) of this section, an association shall equip and maintain a first aid facility that is:

(a) Equipped with at least two (2) beds; and

(b) Attended by a licensed physician and registered nurse during race hours.

(2) An association shall not be required to maintain a first aid facility, if the association:

(a) Has an ambulance on standby on its premises during race hours; and

(b) Can transport an injured individual to a fully-equipped hospital emergency room in:

1. Five (5) minutes or less; and

2. An ambulance manned by a certified paramedic and certified emergency medical technician.

(3) A paramedic provided pursuant to subsection (2) of this section shall be equipped with:

(a) Heart monitor and defibrillator;

(b) Cellular phone; and

(c) Airways intubation equipment.

Section 17. Track Kitchen. An association shall provide a track kitchen within the stable area, maintained in a clean and sanitary manner that complies with applicable statutes, administrative regulations, codes, or ordinances at all times horses are stabled on association grounds.

Section 18. Communication System. An association shall install and maintain in good working service a communication system between the stewards' stand and:

(1) Patrol judges;

(2) Parimutuel department;

(3) Starting gate;

(4) Public address announcer; and

(5) Clerk of the scales.

Section 19. Fire Prevention. (1) An association shall have a fire prevention and suppression program.

(2) The commission shall not approve the commencement of a race meeting, unless, within fifteen (15) days before commencement of the race meeting, the state or local fire marshal:

(a) Has inspected the association; and

(b) Certified that the association plant and stable area meets fire safety requirements.

(3) An association shall maintain a firefighting unit of trained personnel that has high-expansion foam fire extinguishers, and other equipment required by the local fire inspection authority.

(4) An association shall prohibit:

(a) Smoking in stalls, under shed rows, and in feed rooms;

(b) Open fires and oil or gas lamps in the stable area; and

(c) Locking of stalls occupied by horses.

Section 20. Association Security. (1) An association shall provide and maintain security services, night and day, in and about association grounds.

(2) An association shall furnish to the commission a report on any disturbances, drunkenness, or disorderly conduct committed by a person on association grounds.

Section 21. Security. (1) An association shall exclude from association grounds a person designated to be excluded by order of the commission or stewards.

(2) An association shall implement security measures to protect a horse on association ground from being injured by being frightened or tampered with.

(3) An association shall exclude from the paddock area, race strip, and winner's entrance a person who:

(a) Does not have an immediate connection with the horses entered; and

(b) Is not a commission member, racing official, or accredited member of the news media.

Section 22. Vendors and Suppliers. (1) A vendor shall comply with procedures and requirements established by an association.

(2) An association shall not attempt to control or monopolize sales to owners, trainers, or stable employees.

(3) An association shall not grant a concession to a vendor of feed, racing supplies, or racing services.

(4) A vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including a new preparation or medication.

(5) An association shall not permit the sale of an alcoholic beverage except beer within the stable area.

Section 23. Ejection or Exclusion From Association Grounds. (1)(a) An association shall for probable cause eject or exclude from association grounds a person:

1. Believed to be engaged in:

a. A bookmaking activity;

b. Solicitation of bets; or

c. Touting;

2. Who as a business or for compensation, either directly or indirectly:

a. Accepted anything of value to be wagered, transmitted, or delivered for wager to a pari-mutuel wagering enterprise; or

b. Participated in the transaction; or

3. Who attempted to use tax exempt admissions credentials not issued to him by the association.

(b) An association shall immediately submit a report on the ejection or exclusion from association grounds of a person who engaged in activity prohibited by paragraph (a) of this subsection to the:

1. Commission;

2. Stewards; and

3. Police.

(2) An association shall eject or exclude from its stable area a person who is not:

(a) Licensed to conduct an activity which requires his presence in the stable area;

(b) An accredited member of the news media;

(c) A guest of a licensed owner or trainer accompanied by the owner or trainer; or

(d) Accompanied by, and under the control and supervision of a:

1. Racing official;

2. Association security guard; or

3. Association public relations department representative.

(3)(a) A report of an ejection or exclusion from association grounds for any reason shall be made immediately to the commission and the stewards.

(b) A report shall state the:

1. Name of person ejected or excluded;

2. Reasons for the ejection or exclusion; and

3. Facts relating to the ejection or exclusion.

Section 24. Ownership of Associations. An association shall file with the commission a revised list of persons whose identity is required by 810 KAR 1:025 immediately upon transfer of a beneficial interest or control in the association.

Section 25. Plan of Association Grounds. (1) An association shall file with the commission maps and plans of association grounds, showing:

(a) Structures;

(b) Piping;

(c) Fire hydrants;

(d) Fixed equipment;

(e) Racing strip, noting elevation as filled, drained, and gapped; and

(f) Composition of track base and cushion.

(2) An association shall file revised maps or plans of association grounds upon any material change.

Section 26. Attendance Report and Badge List Report; Tax Exempt Credentials. (1) An association shall file with the commission a copy of the form required by KRS 137.180 and 138.480, "Race Track Pari-mutuel and Admissions Report," Revenue Form 73A100, incorporated by reference in 103 KAR 3:050.

(2) A tax exempt admission credential shall not be transferable.

Section 27. Financial Report. Within sixty (60) days after the close of its fiscal year, an association shall file:

(1) Three (3) copies of its balance sheet; and

(2) A comparison to the prior year.

Section 28. Horseman's Account and Horseman's Bookkeeper. (1) An association shall maintain a bank account that shall:

(a) Be separate from its other accounts;

(b) Be Entitled "horsemen's account"; and

(c) Contain sufficient funds to pay money owing to horsemen for:

1. Purses;

2. Stakes;

3. Rewards;

4. Claims; and

5. Deposits.

(2) Withdrawals from the horsemen's account shall be subject to audit by the commission at any time.

(3)(a) For all races, purse money shall be available to earners after the result of the race in which the money was earned has been declared official; and

1. For race dates where all samples are reported by the commission laboratory as passed at the screening level, within twenty-four (24) hours after receipt of the report by the commission; or

2. For race dates where one (1) or more sample is reported by the commission laboratory as suspicious at the screening level, within twenty-four (24) hours after receipt of the final report by the commission.

(b) In cases where a horse is disqualified and an appeal has been filed, purse money shall be available to other participants entitled to purse money in the amount they would have earned had a horse not been disqualified. The purse money to which the disqualified participant would be entitled shall be held in escrow by the association until final adjudication of a dispute over which persons are entitled to money.[~~Except as provided by paragraph (b) of this subsection, purse money shall be available to earners within forty-eight (48) hours, dark days excluded, after the result of the race in which the money was earned has been declared official.~~

~~(b) The stewards shall order money withheld until final adjudication of a dispute over which persons are entitled to money.~~]

(4)(a) Except for jockey fees, a deduction from purse money shall not be made, unless the deduction has been requested in writing by the:

1. Person to whom purse money is payable; or

2. Authorized representative of the person to whom purse money is payable.

(b) Whether or not a deduction request is made, at the close of a race meeting, the horsemen's bookkeeper in charge of the horsemen's account shall mail to an owner a duplicate of each record of a deposit, withdrawal, or transfer of funds that affects his racing account.

(5) The horsemen's bookkeeper in charge of the horsemen's account shall be bonded.

Section 29. Outriders. (1) An association shall employ at least two (2) outriders.

(2) An outrider shall:

(a) Escort starters to the post; and

(b) Assist in the returning of all horses to the unsaddling area.

(3) An outrider shall:

(a) Only lead a horse that has demonstrated unruliness; and

(b) Assist in the control of a horse that might cause injury to a jockey or others.

(4) Whenever horses are permitted on the racing strip for exercising or racing, an outrider shall be:

(a) Present on the racing strip;

(b) Mounted; and

(c) Ready to assist in the:

1. Control of an unruly horse; or

2. Recapture of a loose horse.[~~(5) When a person exercises a horse during training hours, or accompanies a horse to the starting gate during racing hours, he shall wear a safety vest that meets the "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM F1937-04," incorporated by reference in 810 KAR 1:009.~~]

Section 30. A person mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commis-

sion official, the person shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker indicating that it meets one of the following safety standards:

(a) ASTM International Standard, ASTM F1163-04a;

(b) British Standards, BS EN 1384:1997 or PAS 015:1999; or

(c) Australian/New Zealand Standard, AS/NZS 3838:2006.

Section 31. Any person mounted on a horse or stable pony on any location under the jurisdiction of the commission, all assistant starters, and any person handling a horse in a starting gate shall wear a safety vest at all times. The safety vest shall comply with one (1) of the following minimum standards:

(a) British Equestrian Trade Association (BETA):2000 Level 1;

(b) Euro Norm (EN) 13158:2000 Level 1;

(c) American Society for Testing and Materials (ASTM) F2681-08;

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or

(e) Australian Racing Board (ARB) Standard 1.1998.

Section 32. Valets. (1) An association shall employ a number of licensed valets sufficient to attend each rider on a day's racing program.

(2) A valet shall be under the immediate supervision and control of the clerk of scales.

(3) A rider shall not employ a valet or be attended by a person other than the valet assigned to him by the clerk of scales.

(4) A valet shall not be assigned to the same rider for more than two (2) consecutive racing days.

(5) A valet shall:

(a) Be responsible for the care and cleaning up of the apparel and equipment of his assigned rider;

(b) Ensure his rider has the proper equipment and colors for a race;

(c) Present the proper equipment and attend the saddling of his rider's mount; and

(d) Attend the weighing out of his rider.

(6) A valet or other jockey room attendant shall not place a wager, directly or indirectly, on races run while he serves as a valet for himself or another.

(7)(a) An association shall provide uniform attire for valets.

(b) A valet shall wear the attire provided by an association whenever he performs his duty within public view.

Section 33.[~~32.~~] Minimum Purse and Stakes Values. (1) An association shall not program or run any race for which the purse is less than $2,000 in cash, without special permission of the commission.

(2) An association shall not program or run a stakes race the added value of which is less than $10,000 in cash added by the association to stakes fees paid by owners.

(3) The minimum cash amounts paid by the association shall be exclusive of:

(a) Nomination;

(b) Eligibility;

(c) Entrance;

(d) Starting fees;

(e) Cash awards;

(f) Premiums;

(g) Prizes; or

(h) Objects of value.

Section 34.[~~33.~~] Maximum Number of Races. An association shall not program or run more than nine (9) races on a racing day without permission of the commission.

Section 35.[~~34.~~] Two (2) Year Old Races. Beginning on March 1 of each year, an association shall program in the conditions book at least four (4) two (2) year old races each week.

Section 36.[~~35.~~] (1)(a) Exculpatory clauses. Stall applications, entry forms, condition books, and other agreements between persons or entities licensed by the Kentucky Horse Racing Commission regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

1. Ordinary negligence which causes or contributes to loss, injury or damage to horses while on the premises of a licensed association; and

2. Ordinary negligence which causes or contributes to personal injury or property damage, including loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by the licensed association.

(b) Subject to the exception in paragraph (a) of this subsection, all licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. A licensee shall not attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice to and consent of licensees. All persons licensed by the Kentucky Horse Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this administrative regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions which exceed the limitations set forth in this administrative regulation shall be void and unenforceable in their entirety.

(3) Model provision. The following provision shall be deemed to comply with the limitations set forth in this administrative regulation: All Kentucky Horse Racing Commission licensees, including but not limited to the host association, owners, trainers, jockeys, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in these activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training, and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless and covenant not to sue all other licensees so participating for:

(a) Ordinary negligence which causes or contributes to loss, loss of use, injury or damage to horses while on the premises of (name of licensed association); and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee and its agents or employees, the condition of the premises of (name of licensed association) or any other cause. Except as provided above, all licensees participating in racing, training and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law.

Section 37. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM.

(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, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission Web site at www.khrc.ky.gov.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 8, 2010
FILED WITH LRC: June 15, 2010 at 11 a.m.
CONTACT PERSON: Susan Bryson Speckert, General Coun-

sel, 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 sets forth restrictions and requirements on the conduct of a horse race meeting by an association.

(b) The necessity of this administrative regulation: The regulation is necessary to regulate the conduct of racing associations, and to ensure that an association conducts a horse race meeting with adequate regard for the health and safety of participants, horses, and the public.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky. This regulation establishes restrictions and requirements concerning the conduct of horse race meetings by racing associations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation gives detailed guidance as to the requirements racing associations must satisfy to conduct a horse racing meeting, including use of safety equipment.

(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 updated provisions concerning the safety vests required to be used by persons at locations under the jurisdiction of the commission, including racing associations. The amendment allows the use of several safety vests that provide adequate protection. The amendment also requires all persons mounted on a horse as well as persons working the starting gate to wear certified safety vests.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that persons mounted on horses at associations as well as persons working the starting gate wear certified and tested safety vests.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the commission broad authority to promulgate regulations governing horse racing. This amendment creates a safer riding and working environment for human and equine participants in horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further the goal of securing the safety and welfare of persons riding horses and working the starting gate at locations under the jurisdiction of the commission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is difficult to estimate the number of persons involved, but undoubtedly several hundred licensees will be required to comply with the safety vest rule in the Commonwealth, including trainers, exercise riders, out riders, pony riders, and starting gate personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons mounted on horses and working the starting gate at locations under the jurisdiction of the commission will be required to conform to the new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be imposed to comply with this amendment, except for the cost of procuring safety vests. However, this is a normal expense for many participants in horse racing such as jockeys and exercise riders. Some trainers are not in the habit of wearing safety vests, but many states in the U.S. now require trainers to wear safety vests.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will save lives and reduce catastrophic bodily injury. The welfare of human and equine participants in horse racing will be enhanced by ensuring that proper safety vests are worn at locations under the jurisdiction of the Commission.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning safety vests apply equally to all participants in horse racing who are mounted on horses or working the starting gate on grounds under the jurisdiction of the Kentucky Horse Racing Commission.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation will not impose additional costs upon any government agency.

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

STATEMENT OF EMERGENCY
811 KAR 2:020E

KRS 230.260(9) grants the Kentucky Horse Racing Authority the authority to issue and establish the conditions of licensure for participation in 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." 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.

The amendment to 811 KAR 2:020 is necessary to make it consistent with the licensing regulations pertaining to individuals participating in thoroughbred and standardbred racing. The amendment will also separate out the portion of the regulation which addresses the licensing requirements for racing associations. The licensing of racing associations will be addressed in a new administrative regulation. The amendment also clarifies the commission's right to search for and seize suspected contraband in the course of investigating suspected violations of KRS Chapter 230 and KAR Title 811.

The Red Mile will have two (2) days of quarter horse racing in July and Keeneland is holding an arabian race during its October meet, in conjunction with the conclusion of the World Equestrian Games. It is necessary to file the amendment to 811 KAR 2:020 on an emergency basis so that the requirements contained therein will be in effect at the time of these races. The delays inherent in the ordinary regulation review process would prevent the amended regulation from applying to the racing at The Red Mile, and perhaps not even with respect to the race at Keeneland.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. This emergency administrative regulation is substantially different from the regulation filed July 20, 2009 because all licensing requirements pertaining to racing associations have been removed 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 811. This emergency administrative regulation is identical to the ordinary administrative regulation.

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

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

811 KAR 2:020E. Licensing quarter horse, appaloosa, or arabian racing [~~procedures~~].

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320[~~230.210-230.217~~]

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260, 230.290(2), 230.310[~~230.225-230.360~~]

EFFECTIVE: June 15, 2010

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

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

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

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

(2) Categories of licenses shall include:

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

(b) Racing officials;

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

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

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

(f) Commission members.

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

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

1. a completed written application on the form Licensing Application (KHRA 25-01 (03/10)) or the Multi-jurisdictional License Form pursuant to Section 7 of this administrative regulation; and

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

(b) A temporary license may be obtained by an authorized representative of an owner in accordance with Section 17 of this administrative regulation. 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 quarter horse, appaloosa, or arabian racing in the Commonwealth may apply to the commission for a license.

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

(b) An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 17 of this administrative regulation.

(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 KHRC Form 25-04 signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS 321.443.

(c) An application from a veterinary assistant shall be accompanied by a KHRC Form 25-04 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, vendor employee. In order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant shall submit a KHRC Form 25-01 from his or her employer verifying employment and workers' compensation coverage.

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

Section 5. Licensing Fees. The amount of the licensing fees shall depend on the number of race days granted by the commission for quarter horse, appaloosa and arabian racing.

(1) The following annual fees shall apply if the commission awards twenty (20) race days or less for quarter horse, appaloosa, and arabian racing:

(a) $35 - owner, trainer, assistant trainer, veterinarian, jockey, jockey agent, claiming license, and temporary license;

(b) $35 - racing secretary, assistant racing secretary, director of racing, starter, assistant starter, paddock judge, patrol judge, placing judge, timer, jockey apprentice, farrier, steward, testing laboratory employee, racing department employee, valet, and outrider;

(c) $35 - veterinary assistant, veterinary technician, veterinary technologist, vendor, mutuel employee, farm manager, and farm agent;

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

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

(2) The following annual fees shall apply if the commission awards more than twenty (20) race days for quarter horse, appaloosa and arabian racing:

(a) $125 - owner, trainer, assistant trainer, veterinarian, jockey, jockey agent, claiming license, and temporary license;

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

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

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

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

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

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

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

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

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

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

(3) Verify information provided by the applicant.

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

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

(3) A licensee shall:

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

(b) Respond correctly to the best of the licensee's knowledge if

questioned by the commission or designee about a racing matter.

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

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

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

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

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

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

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

Section 12. Voluntary Withdrawal of License Application. (1) A license applicant may, 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 his or her designee, the director of licensing or his or her designee, the chief state steward or his or her designee, and at least one other commission member or commission staff member as designated by the executive director. At least three (3) members of the committee shall participate in any license review committee meeting.

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

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

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

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

(a) The public interest for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering may be 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 quarter horses, appaloosas or arabians;

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

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

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

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

(s) The licensee or applicant has possessed on association grounds, without written permission from the commission or the chief state steward, any appliance or device, other than an ordinary whip, which could be used to alter the speed of a horse in a race or workout;

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

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

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

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

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

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

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

3. Fighting;

4. Assaults;

5. Offensive and profane language;

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

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

8. Disturbing the peace;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Criminal charges;

(b) Criminal convictions;

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

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

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

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

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

(b) A horse in a trainer's care shall not start in a race unless the owner has a current license or has an application for a temporary license, "Application for a Temporary Owner's License" (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. If a person applies for more than one (1) license, he or she shall pay the license fee associated with each license.

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

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

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

(a) Racing official;

(b) Assistant starter;
(c) Practicing veterinarian for any horse other than the owner's;
(d) Veterinary technician, veterinary technologist, veterinary assistant, or equine therapist for any horse other than the owner's;
(e) Officer or managing employee;
(f) Track maintenance supervisor or employee;
(g) Outrider;
(h) Race track security employee;
(i) Farrier;
(j) Photo finish operator;
(k) Horsemen's bookkeeper;
(l) Racing chemist;
(m) Testing laboratory employee;
(n) Jockey;
(o) Apprentice jockey; or
(p) Jockey agent.

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

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

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

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

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

(5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the executive director, the stewards, the commission director of 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.

(3) This material is also available at www.khrc.ky.gov.[~~License Required. (1) A person, legal entity, or association shall not conduct any Arabian, quarter horse or appaloosa race for any stakes, purse, or reward in the commonwealth without first securing a license therefor from the commission.~~

~~(2) A person shall not participate in Arabian, quarter horse or appaloosa racing in the commonwealth as a horse owner, trainer, jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, without first securing a license from the commission.~~

~~Section 2. Conditions Precedent to Issuance of License. (1) Arabian, quarter horse and appaloosa racing and participation therein in the commonwealth are privileges, not rights, granted only by the commission by license subject to the conditions precedent established in this section.~~

~~(2) Acceptance of a license shall be construed as consent and agreement to the following conditions precedent by the licensee and failure to comply with these conditions shall be grounds for immediate voidance or revocation of such license:~~

~~(a) Representations made or with license application are complete and correct.~~

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

~~1. Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to:~~

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

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

~~2. Excepted rulings and decisions by the stewards shall be final with no right of review by the commission or courts.~~

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

~~(b) Licensee shall consent to seizure of any object which may be evidence indicating a rule violation. Licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge all questions asked by the commission or its representatives pertaining to racing matters.~~

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

~~(b) Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, or blood specimen taken from a horse, the trainer of the horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering.~~

~~Section 3. Standards for Granting Licenses and Racing Dates to Associations. The commission may issue a license to any association which applies for a licensee to conduct an Arabian, quarter horse or appaloosa race meeting on days as the commission may deem appropriate.~~

Section 4. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

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

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

(3) Falsification, misrepresentation, or omission of required information in license application to the commission; failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of Arabians, quarter horses or appaloosas.

(4) Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;

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

(6) Person less than sixteen (16) years of age;

(7) Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examinations prescribed by the stewards;

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

(9) Employment or harboring of unlicensed persons required by these rules to be licensed;

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

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

(a) Firearms;

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

(c) Other applicants other than an ordinary whip which could be used to alter the speed of a horse in a race or workout.

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

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

(b) Narcotics, or medication, or drug, or substance which could be used to alter the speed of a horse in a race.

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

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

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

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

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

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

(19) Violation of any administrative regulation of the commission, or aiding or abetting any person in the violation of any administrative regulation.

Section 5. License Applications for Associations. Persons or legal entities desiring to conduct Arabian, quarter horse or appaloosa racing in the commonwealth shall apply to the commission for association license. The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. The application shall contain:

(1) Name and location of track. Initial applications shall be accompanied by such physical information as the commission may require;

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

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

(4) Corporations, partnerships, or other legal entities which own or control a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in such legal entities with a degree of ownership or type of interest pertaining to such ownership or control. Applications shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made;

(5) Days and hours on which racing is requested to be conducted;

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

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

(8) An operating report on forms prescribed by the commission if applicant is currently licensed;

(9) Other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct Arabian, quarter horse and appaloosa racing; and

(10)(a) Based on the daily mutuel handle, all associations and tracks shall pay a daily licensing fee to the Kentucky Quarter Horse, Appaloosa and Arabian Commission as follows:

From	But Less Than	Daily Licensing Fee
$0	$75,000	$100
75,000	150,000	150
150,000	200,000	200
over 200,000		300

(b) In the event that the commission allows two (2) racing programs on one (1) day, a separate daily fee for each racing program shall be paid.

(c) As used in this section the term "daily mutuel" shall mean the total gross amount of money bet or wagered by the track's patrons.

Section 6. License Application for Participants in Racing. (1)(a) A person other than an association required to be licensed by Section 1 and desiring to participate in Arabian, quarter horse and appaloosa racing in the Commonwealth shall apply to the commission for a license.

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

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

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

(4)(a) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one (1) individual person desiring to race horses in the commonwealth shall, in addition to designating the person or persons to represent the entire ownership of such horses, be accompanied by documents

~~which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in such horses.~~

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

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

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

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

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

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

~~(a) Thirty-five (35) dollars - Owner license;~~

~~(b) Thirty-five (35) dollars - Trainer, jockey, or forty-five (45) dollars - jockey's agent license;~~

~~(c) Thirty-five (35) dollars - Veterinarian, dental technician, assistant trainer, farrier, or apprentice farrier license;~~

~~(d) Five (5) dollars - Stable employee license (foreman, authorized agent, exercise boy, groom, hotwalker, watchman, or pony boy);~~

~~(e) Twenty-five (25) dollars - Stable area supplier license (suppliers of horse feed, tack, medication, or food vendors);~~

~~(f) Thirty-five (35) dollars - Racing department employee license, steward, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, association veterinarian, testing laboratory employee, horse identifier;~~

~~(g) Twenty (20) dollars - Mutuel department employee license, manager, calculator sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizator employee;~~

~~(h) Ten (10) dollars - Occupational license, admission department manager and employees; concessions manager and employees; parking manager and employees; association security department including police chief, detectives, policemen, watchmen, fire, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees; valet, jockey room custodian, clerk of the scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider; all other persons employed by the association or employed by a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting.~~

~~Section 7. Licensing Committee. (1) The commission may appoint a licensing committee including the commission secretary and commission steward or their designated representative.~~

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

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

~~Section 8. Term of License. Licenses issued by the commission for participation in Arabian, quarter horse and appaloosa racing shall be valid from the date of issuance through the calendar year shown on the license at all race meetings conducted by associations in the commonwealth during calendar year, unless sooner suspended, revoked, or voided. The validity of a license does not preclude or infringe upon the common law right of associations to eject or exclude any persons, licensed or unlicensed, from association grounds.~~

~~Section 9. Possession of License Required. Persons required to be licensed by these administrative regulations shall not participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license therefor and having same in his possession. All licenses specified under Section 7(9)(b) to (i) of this administrative regulation shall include a color photograph of the licensee.~~

~~Section 10. Applicability of Rules and Rulings to Household. Administrative regulations pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by such affected person will in no way circumvent the intent of the rule, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.~~

~~Section 11. Notice for Discontinuance of Employment. (1) Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities, notify the commission and respective interested persons or associations of their intention at least fifteen (15) days before their termination.~~

~~(2) The commission shall upon notice to parties in interest conduct a hearing on the matter.~~

~~(3) If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these administrative regulations, the commission shall so advise all parties in interest and shall take appropriate action against offending parties.~~

~~(4) If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these administrative regulations, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.~~]

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 8, 2010
FILED WITH LRC: June 15, 2010 at 11 a.m.
CONTACT PERSON: Timothy A. West, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, 811 KAR 2:020, governs the licensing of individual participants in quarter horse, appaloosa and arabian horse racing in the Commonwealth.
(b) The necessity of this administrative regulation: This regulation is necessary to provide licensing standards for individuals participating in quarter horse, appaloosa and arabian horse 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: Pursuant to KRS 230.215(2) and 230.260(3), the commission is required to promulgate administrative regulations governing the conditions of horse racing in the Commonwealth. In addition, KRS 230.290 and 230.310 provide the statutory criteria for the licensing of participants in horse racing in the Commonwealth. This administrative regulation sets forth the licensing requirements for participants in quarter horse, appaloosa and arabian 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 for participants in quarter horse, appaloosa and arabian racing 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 quarter horse, appaloosa and arabian racing and make them consistent with the requirements for thoroughbred and standardbred racing licenses. 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 811. 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 quarter horse, appaloosa and arabian racing to be consistent with the licensure requirements for thoroughbred and standardbred racing.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation sets forth the rules regarding licensure for individuals participating in quarter horse, appaloosa and arabian racing.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will provide further guidance and clarity regarding he requirements and the process for obtaining a license to participate in quarter horse, appaloosa and arabian racing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 260 licenses for participants in quarter horse, appaloosa and arabian racing 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 positively impacted by the updates to licensing regulations in that the licensing policies and procedures have been clarified, thus making the licensure process clearer and easier to complete.

(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.

(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 commission 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 unless there is a dramatic increase in the number of race days awarded for quarter horse, appaloosa and arabian racing. Right now there are only three such days awarded. If this area of racing grows and more than 20 such days are awarded, the fees will increase to correspond to the fees in place for standardbred racing licensees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Increase in fees, only as described in (7).

(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. Little or no effect on expenditures or revenues due to the low number of applicants for licenses to participate in quarter horse, appaloosa and arabian racing.

(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? Very little revenue due to the low number of applicants for licenses to participate in quarter horse, appaloosa and arabian racing.

(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? Revenue could increase if there is growth in quarter horse, appaloosa and arabian racing.

(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
811 KAR 2:140E

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. 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." 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 230.300 imposes an October 1st deadline for

the submission of applications to conduct a horse race meeting. It is necessary to file this regulation on an emergency basis because the delays inherent in the ordinary administrative regulation review process will not allow the regulation to be effective in time to meet the October 1st application deadline. 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.

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

811 KAR 2:140E. 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: June 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the Kentucky Horse Racing Authority the authority to regulate conditions under which quarter horse, appaloosa and arabian racing shall be conducted in Kentucky. KRS 230.300 authorizes the authority to issue licenses to conduct race meetings. Executive Order 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 quarter horse, appaloosa or arabian 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", KHRC 140-01 (4/10).

(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. 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. 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. 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. 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 non-refundable.

(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 811 KAR Chapter 2;

(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 811 KAR Chapter 2, and the applicable statutes and regulations;

(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", KHRC 140-02, (4/10). 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) of this section, 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 140-01, 4/10; and

(b) "Kentucky Horse Racing Commission Change of Control Form", KHRC 140-02, 4/10.

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

(3) This material 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: June 8, 2010
FILED WITH LRC: June 15, 2010 at 11 a.m.
CONTACT PERSON: Timothy A. West, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

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 establishes the licensing application procedures and requirements for conducting quarter horse, appaloosa and arabian 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 quarter horse, appaloosa and arabian 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 wishing to conduct quarter horse, appaloosa and arabian racing in the Commonwealth are affected by this new regulation. Currently there are eight (8) licensed associations in the Commonwealth of Kentucky and one available license.

(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): First time license applicants will pay costs in the amount of $10,000 to cover the costs of the due diligence performed by the commission in reviewing the application and an additional license fee of $5,000. There are no fees for licensees seeking renewal of an existing license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying, applicants will be able to obtain a license to hold a race meeting, or will be able to renew an existing license. 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 fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: First time applicants for an association license will pay costs related to the commission performing its due diligence before issuing a license, as well as a licensing fee. They will also be subject to additional questions due to additional information requirements and staff review. Renewal licenses will not be subject to the payment of costs or the licensing fee.

(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/A

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

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, June 8, 2010)

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 **a credit earned based on sixty (60) minutes of participation in a physical therapy-related** **[**~~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 **as defined by KRS 327.010(1) if** **[**~~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 **regulations**. **[**~~(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 **the** board, the board's designee, **the American Physical Therapy Association (**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 **the board** **[**~~KSBPT~~**]** or its designee;

(d) Authorship of **a** research article, manuscript**,** or scientific paper, published in the biennium and related to physical therapy**.** **[**~~,~~**]** Fifteen (15) contact hours **shall be awarded** with a maximum of two (2) events per biennium;

(e) A presented scientific poster **or[**~~,~~**]** scientific platform presentation related to physical therapy**.** Ten (10) contact hours **shall be awarded** 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**. A maximum of twenty (20) contact hours per biennium shall be awarded[**~~, 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 **shall be awarded** 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 **Kentucky Board of Physical Therapy** **[**~~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 **shall be awarded** 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 in-service 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) **A[**~~Any~~**]** licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities **shall[**~~may~~**]** be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee **shall[**~~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**, including a plan describing how the required credits will be met**; 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 **shall[**~~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**, including a plan describing how the required credits will be met,** 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", **June 2010[**~~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. KLU.S.C.H, Executive Director

APPROVED BY AGENCY: March 18, 2010

FILED WITH LRC: April 14, 2010 at 3 p.m.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, June 8, 2010)

201 KAR 22:135. Fees.

RELATES TO: KRS **61.874(4),** 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) **$200 for** initial credentialing by application **[**~~$200~~**]**[~~shall be $170~~];

(2) **$180 for a** reinstatement application **[**~~$180~~**]**[~~shall be $150~~] plus the impaired practitioner's assessment as set forth in 201 KAR 22:140, Section 1; and

(3) **$130 for a** 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. KLU.S.C.H, Executive Director

APPROVED BY AGENCY: April 7, 2010

FILED WITH LRC: April 14, 2010 at 3 p.m.

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.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 8, 2010)

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**, Section 1(2)(a) or (b)**.

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.
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.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 8, 2010)

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 hunting~~].

(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.

(d) Grouse: closed to hunting and trapping.[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 **Saturday[**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**; and**

3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.

(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**, Section 5(2),** by:

1.[~~(a)~~**]** A check containing the drawn confirmation number;

2.[~~(b)~~**]** A money order enclosed with the draw confirmation number; or

3.[~~(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 phone 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.
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.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 8, 2010)

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.

RELATES TO: KRS 150.010, **150.170(4),** 150.180, 150.990
STATUTORY AUTHORITY: KRS 150.025(1),**[**~~150.170(4),~~**]** 150.177, 150.178, 150.390(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to **promulgate administrative regulations to implement KRS Chapter 150 and to** establish hunting seasons, **[**~~regulate~~**]** bag **[**~~and possession~~**]** limits, and **[**~~determine the~~**]** methods **of taking wildlife [**~~and devices used to take wildlife. KRS 150.170(4) exempts landowners, their dependents, and their resident tenants from license requirements~~**]**. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator[~~elk~~] permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement**.** and any postseason hunt [~~to be~~] held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having **at least** one (1) antler with [~~one (1) antler possessing~~] four (4) or more antler points that are each at least one (1) inch long when measured from the main beam which also counts as one (1) point.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife**, but shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices**.

(4) "Baiting" means to place, deposit, tend, distribute, or scatter bait.

(5) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(6)[~~(4)~~] "Elk" means Cervus elaphus nelsoni.

(7)[~~(5)~~] "Elk Hunting Unit" or "EHU" means a designated area in the restoration zone with specific management restrictions.

(8)[~~within the elk restoration zone possessing specific elk management restrictions.~~

~~(6)~~] "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a postseason antlerless elk **quota[**~~quote~~**]** hunt.

(9)[~~within the elk restoration zone, possessing specific elk management restrictions during a postseason antlerless quota hunt.~~

~~(7)~~] "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for **at least** five (5) years.

(10)[~~(8)~~] "Out-of-zone" means all counties not included in the restoration **zone [**~~area~~**]**.

(11)[~~(9)~~] "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(12) **"Spike" means an elk having one (1) or two (2) antler points on each side**

(13) [~~(10)~~] "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall [~~not~~]:

(a) Attach a department-issued disposal permit to an elk prior to moving[~~Move the elk until a disposal permit provided by the department has been attached to~~] the carcass; and

(b) Not remove the disposal permit until the carcass is processed.

Section 3. Regular Elk Quota Hunts. (1) The elk quota hunt lottery [~~hunt~~] application period shall be December 1 to April 30.

(2) A person shall apply for the elk quota hunt via the department's Web site **at http://fw.ky.gov** and provide **the applicant's**:[~~. The applicant shall provide the following:~~]

(a) **[**~~The applicant's~~**]** Name**;**

(b) Social Security number;

(c) Date of birth;

(d) **[**~~A~~**]** Mailing address or phone number; and

(e)[~~, Social Security number, date of birth, and mailing address or phone number; and~~

~~(b)~~]**[**~~A~~**]** Nonrefundable application fee of ten (10) dollars.

(3) [~~An applicant shall not apply more than once per application period.~~

~~(4)~~] The commissioner may extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4)[~~(5)~~] There shall be a random electronic drawing.

(5)[~~(6)~~] Five (5) either-sex elk permits shall be available for a special youth-only [~~elk~~] quota hunt to be held for three (3) consecutive days on Paul Van Booven WMA and adjacent private lands as allowed by the landowner, beginning the last Saturday in September.

(a) There shall be a separate random electronic drawing for the youth-only elk quota hunt.

(b) The application period for the youth-only elk quota hunt shall be December 1 through April 30.

(c) A youth shall apply via the department's Web site **at http://fw.ky.gov** and provide **the applicant's** [~~the following~~]:

1. **[**~~The applicant's~~**]** Name;[~~Name;~~]
2. Social Security number;
3. Date of birth;
4. Mailing address;
5. Phone number; and
6. **[**~~A~~**]** Nonrefundable application fee of ten (10) dollars.

(d) An applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(e) An applicant for the youth-only elk quota hunt may also apply for the regular quota hunt as established in **this** section **[**~~3~~**]**[~~also may apply for the regular quota hunt as set forth in Section (3)~~] **[**~~of this administrative regulation~~**]**.

(f) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in the regular quota hunt lottery held during the same calendar year.

(g)[~~(f)~~**]** A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn for the youth-only elk quota hunt in subsequent years.

(6)[~~(7)~~] No more than ten (10) percent of all drawn applicants shall be nonresidents.

(7)[~~(8)~~] A quota hunt permit awarded via a department-administered lottery drawing shall not be transferable.

(8) Beginning December 1, **2010[**~~2011~~**]**, there shall be four (4) separate regular elk quota hunt lotteries consisting of:

(a) Antlered **or spike** archery **or crossbow**;

(b) Antlered **or spike** firearms;

(c) Antlerless archery **and crossbow**; and

(d) Antlerless firearms.

(9) **An applicant shall:**

(a) Apply only once for an individual lottery;

(b) Not apply for more than two (2) of the four (4) lotteries;

(c) Not be eligible to be drawn in more than one (1) of the four (4) lotteries;

(d) Only be selected by a random electronic drawing; and

(e) Pay a nonrefundable application fee of ten (10) dollars for each lottery entry. [~~Applicants shall enter each lottery separately.~~

~~(a) A person shall only apply once for an individual lottery, but may enter up to two (2) of the four (4) lotteries, but shall be ineligible to be drawn in more than one (1) lottery;~~

~~(b) The nonrefundable application fee for each lottery entry shall be ten (10) dollars; and~~

~~(c) Applicants shall be selected for a quota hunt by random electronic drawing.~~**]**

(10) A person who is drawn for an antlered elk quota hunt shall be ineligible to be drawn for any antlered elk quota hunt for the following three (3) years.

(11) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at 1-800-858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner **shall[**~~may~~**]** issue to a landowner cooperator**:**

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement. [~~one (1) either-sex elk permit or two (2) antlerless-only permits per each 5,000 acres for each year of the agreement.~~**]**

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 5 and 6 of this administrative regulation.

(3) A landowner cooperator permit is transferable, but shall only be used [~~only~~] on the land for which the agreement was made.

(a) The permit may be transferred to any person eligible to hunt in Kentucky.

(b) Prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide [~~the following information~~] **[**~~to~~**]** the department **the hunter's**:

1. **[**~~The hunter's~~**]** Name;
2. Social Security number;
3. Address; and
4. Telephone number.

(c) The permit shall not be transferable after being used for the harvest of one (1) elk.

(4) Public access agreements with the department shall be recorded in writing.

Section 5. Hunter Requirements. (1) The statewide bag limit shall be one (1) elk per hunter per license year.

(2) **An elk hunter in the restoration zone [**~~A drawn applicant or a person who legally receives a landowner cooperator permit or a special commission permit [issued] pursuant to 301 KAR 3:100~~**]** may be accompanied by up to two (2) other individuals.

(3) A person drawn for a regular quota hunt[~~drawn applicant~~] shall be assigned to a single EHU and shall not hunt outside that EHU, except that a drawn applicant who owns land in the elk restoration zone may hunt on his or her land.

(4) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(5) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs[~~for leashed tracking dogs to recover wounded elk~~];

(c) Hunt over bait [~~as defined in 301 KAR 3:010~~];

(d) Drive elk from outside the assigned EHU;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that[~~,~~] a disabled hunter who has a hunting method exemption permit issued **pursuant to 301 KAR 3:027,** by the department may use a stationary vehicle as a hunting platform.

(6) A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.[~~An elk hunter hunting in the restoration zone shall display a vehicle tag issued by the department in the windshield of his or her vehicle at all times while hunting elk.~~]

(7) A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the person's firearm.

(8) An adult accompanying a person under (16) years old shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(9) A hunter may use any deer hunting method authorized by[~~firearm, archery equipment, or crossbow legal for hunting deer pursuant to~~] 301 KAR 2:172.

(10) **A person shall not use any of the following items to take an elk: [**~~Except as authorized by KRS 237.110, a person shall not carry any of the following items while hunting elk:~~**]**

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm [~~of~~] less than.270 caliber;

(c) A muzzle-loading firearm [~~of~~] less than.50 caliber;

(d) A shotgun [~~of~~] less than 20 gauge;

(e) Any arrow without a broadhead point;

(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than.270[~~0.270~~] inches (.270 caliber), and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards.

(11) **[**~~Except as authorized by KRS 237.110, a person shall not carry a firearm during the archery-only season as set forth in Section 6 of this administrative regulation.~~

~~(12) A person, including one who carries[those who carry] a concealed weapon authorized by KRS 237.110, shall not:~~

~~(a) Use any of the items listed in Section 5(10) to take elk;~~ ~~and~~

~~(b) Use any firearm to take elk during the archery-only season as set forth in Section 6 of this administrative regulation.~~

~~(13)~~**]** A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(12)[~~(14)~~**]** An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in all of[~~either~~] the antlered-only or antlerless-only quota hunts in accordance with the seasons and limits **established** in Section 6 of this administrative regulation.

Section 6. Elk Quota Hunt Seasons and Limits. (1) **A person who is participating in a quota hunt may use archery equipment to take an [**~~For the 2010-2011 season, a person who is legally participating in a quota hunt~~**]**[~~A hunter~~] **[**~~may use archery equipment for antlered and antlerless~~**]** elk beginning **with** the third Saturday in October through the third Monday in January.

(2) **A person who is participating in a quota hunt may use a crossbow to take and elk: [**~~For the 2010-2011 season, a person who is legally participating in a quota hunt~~**]**[~~A hunter~~] **[**~~may use a crossbow for antlered or antlerless elk:~~**]**

(a) For two (2) consecutive days beginning the third Saturday in October; and

(b) From the second Saturday in November through December 31.

(3) **A person who is** F**[**~~or the 2010-2011 season, a person legally~~**]** participating in a quota hunt[~~A hunter~~] may use archery equipment, a modern firearm, a muzzleloader, or a crossbow:

(a) For antlered **and spike** elk during one (1) of two (2) seven (7) consecutive day periods as randomly assigned by the department **as follows:[**~~.~~**]**

1. The first seven (7) day period shall begin the first Saturday in October; and[~~.~~]

2. The second seven (7) day period shall begin the second Saturday in October; and[~~. 3. The hunter shall be assigned during the regular draw.~~]

(b) For antlerless elk during one (1) of two (2) seven (7) consecutive-day periods as randomly assigned by the department **as follows:[.]**

1. The first seven (7) day period shall begin the second Saturday in December; and

2. The second seven (7) day period shall begin the third Saturday in December. [~~(4) Beginning with the 2011-2012 season, a hunter drawn for an archery antlered or antlerless permit may use archery equipment beginning the third Saturday in September through the third Monday in January, except when a firearms elk season is open.~~

~~(5) Beginning with the 2011-2012 season, a hunter drawn for an archery antlered or antlerless permit may use a crossbow beginning the fourth Saturday in September through the third Monday in January, except when a firearms elk season is open.~~

~~(6) Beginning with the 2011-2012 season, a hunter drawn for a firearms antlered permit may use a firearm during one (1) of two (2) seven (7) consecutive day periods as randomly assigned by the department.~~

~~1. The first seven (7) day period shall begin the first Saturday in October; and~~

~~2. The second seven (7) day period shall begin the second Saturday in October.~~

~~(7) Beginning with the 2011-2012 season, a hunter drawn for a firearms antlerless permit may use a firearm, during one (1) of two (2) seven (7) consecutive day periods as randomly assigned by the department.~~

~~1. The first seven (7) day period shall begin the second Saturday in December; and~~

~~2. The second seven (7) day period shall begin the third Saturday in December.~~][~~For antlerless elk;~~

~~1. For ten (10) consecutive days, beginning the second Saturday in November, and;~~

~~2. For fourteen (14) consecutive days beginning the second Saturday in December.~~]

Section 7. EHU boundaries. [~~EHU's shall be designated as follows:~~](1) EHU 1 - Starting at the Martin/Lawrence County line at the Tug Fork of the Big Sandy River, the boundary proceeds southeast following the Tug Fork to the Pike County/Buchanan County, Virginia line. The boundary then proceeds southwest following the Kentucky/Virginia state line to U.S. Hwy 23. The boundary proceeds north following U.S. Hwy 23 to the Johnson/Lawrence County line. The boundary proceeds east following the county line of Johnson/Lawrence and Martin/Lawrence, completing the boundary.

(2) EHU 2 - Starting at the Johnson/Lawrence County line on U.S. Hwy 23, the boundary proceeds south to the intersection of U.S. Hwy 23 with State Hwy 80. The boundary then follows State Hwy 80 west to the intersection with State Hwy 15. The boundary then goes north following State Hwy 15 to the intersection of State Hwy 15 with the Breathitt/Wolfe County line. The boundary then follows the county lines of Magoffin/Wolfe County, Magoffin/Morgan County, and Johnson/Morgan County northeast to U.S. Hwy 23, completing the boundary.

(3) EHU 3A - Starting at the intersection of U.S. Hwy 23 and State Hwy 80, the boundary proceeds south following U.S. Hwy 23 to the intersection of U.S. Hwy 23 with the Kentucky/Virginia state line. The boundary then follows U.S. Hwy 119 west to the intersection of U.S. Hwy 119 with State Hwy 15. The boundary then follows State Hwy 15 northwest to the intersection of State Hwy 15 with State Hwy 80. The boundary then follows State Hwy 80 northeast to the intersection of State Hwy 80 and U.S. Hwy 23, completing the boundary.

(4) EHU 3B - Starting at the intersection of State Hwy 550 and **Kentucky** 1697, go north on **State** Hwy 550 through Mousie and Betty to the intersection with **State** Hwy 7 near Lackey. Turn south on **State** Hwy 7, travel past Dema to intersection with **State** Hwy 899. Turn south on **State** Hwy 899, go through Pippa Passes to intersection with **Kentucky [~~Hwy~~]** 1697 at Alice Lloyd College. Go west on **Kentucky [~~Hwy~~]** 1697 to intersection with **State** Hwy 550 in Garner, completing the boundary.

(5) EHU 4 - Starting at the Breathitt/Wolfe County line on State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway west to the Clay/Laurel County line. The boundary then follows the county lines of Clay/Jackson County, Clay/Owsley County, Perry/Owsley County, Breathitt/Owsley County, Breathitt/Lee County, and Breathitt/Wolfe County northeast to State Hwy 15 at the Breathitt/Wolfe County line, completing the boundary.

(6)[~~(5)~~] EHU 5 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and U.S. Hwy 119. The boundary then follows U.S. Hwy 119 east to the intersection of U.S. Hwy 119 and U.S. Hwy 23. The boundary then follows U.S. Hwy 23 south to the intersection of U.S. Hwy 23 with the Kentucky/Virginia line. The boundary then follows the Kentucky/Virginia state line southwest to the intersection of the state line with U.S. Hwy 421. The boundary then follows U.S. Hwy 421 north to the intersection of U.S. Hwy 421 and State Hwy 66, then north along State Hwy 66 to the intersection of State Hwy 66 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway northeast to the intersection of Hal Rogers Parkway and State Hwy 15, completing the boundary.

(7)[~~(6)~~] EHU 6A - Starting at the intersection of the Hal Rogers Parkway and State Hwy 66, the boundary proceeds south following State Hwy 66 to the intersection of State Hwy 66 with State Hwy 221 at Straight Creek. The boundary proceeds east on State Hwy 221 to the intersection with U.S. Hwy 421. The boundary then proceeds south on U.S. Hwy 421 to the intersection with the Kentucky/Virginia state line. The boundary then follows the state line west to the Kentucky/Tennessee state line and continues west to the intersection of the Wayne/McCreary County line with the Kentucky/Tennessee state line. The boundary then follows the county lines of McCreary/Wayne County, McCreary/Pulaski County, McCreary/Laurel County, Whitley/Laurel County, Knox/Laurel County, and Clay/Laurel County northeast to the intersection of Hal Rogers Parkway and the Clay/Laurel County Line. The boundary then follows Hal Rogers Parkway east to the intersection of Hal Rogers Parkway and State Hwy 66, completing the boundary.

(8)[~~(7)~~] EHU 6B - Starting at the intersection of State Hwy 66 and the Hal Rogers Parkway at Big Creek, the boundary proceeds south on State Hwy 66 to the intersection with U.S. Hwy 421. The boundary then follows U.S. Hwy 421 south to the intersection with Kentucky 2058 near Helton, then follows Kentucky 2058 west to Kentucky 1780 at Spruce Pine. The boundary proceeds north on Kentucky 1780 to the intersection with Kentucky 1850 at Warbranch, then west along Kentucky 1850 to the intersection with State Hwy 66 near Queendale. The boundary then follows State Hwy 66 north to the intersection with Hal Rogers Parkway at Big Creek, completing the boundary.

(9)[~~(8)~~] EHU 6C - Starting at the intersection of U.S. Hwy 421 and Kentucky 2058 near Helton, the boundary proceeds south on U.S. Hwy 421 to the intersection with State Hwy 221. The boundary then follows State Hwy 221 west to the intersection with Kentucky 1780 and turns north to follow Kentucky 1780 to the intersection with Kentucky 2058 at Spruce Pine. It then follows Kentucky 2058 east to the intersection with U.S. Hwy 421, completing the boundary.

(10)[~~(9)~~] EHU 6D - Starting at the intersection of Kentucky 1780 and Kentucky 1850 at Warbranch, the boundary proceeds south on Kentucky 1780 to the intersection with State Hwy 221. The boundary then follows State Hwy 221 west to the intersection with Kentucky 2011, turning north along Kentucky 2011 to the intersection of Kentucky 2011 and State Hwy 66. It then follows State Hwy 66 north to Kentucky 1850, then proceeds east on Kentucky 1850 to the intersection with Kentucky 1780, completing the boundary.

(11)[~~(10)~~] EHU 6E - Starting at the intersection of State Hwy 66 and Kentucky 2011 near Beverly, the boundary proceeds south along Kentucky 2011 to the intersection with State Hwy 221 at Stoney Fork. The boundary then follows State Hwy 221 west to the intersection with State Hwy 66 at Straight Creek, turning north along State Hwy 66 to the intersection with Kentucky 2011, completing the boundary.

Section 8. Post-season[~~Postseason~~] Quota Hunt for **[~~Antler-~~**

~~less~~**]** Elk on Private Land. (1) A modern firearms quota hunt for antlerless elk and **spikes [**~~elk having less than four (4) points on both sides~~**]** shall take place beginning on the fourth [~~4th~~] Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants:

(a) Who were not drawn for the previous elk quota hunts; and

(b) Who are residents of the elk restoration zone.

(3) A drawn applicant shall comply with the requirements in Section 5 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) EMU boundaries shall be [~~designated as follows~~]:

(a) Knott County EMU - Starting at the intersection of State Hwy 550 and State Hwy 7 near Lackey, the boundary proceeds south along State Hwy 7 to the intersection with State Hwy 582 then southeast on State Hwy 582 to the intersection of State Hwy 582 and 160. The boundary then proceeds north on State Hwy 160 to the intersection with State Hwy 550 at Hindman, turning northeast on State Hwy 550 to the intersection with State Hwy 7, thus completing the boundary.

(b) Stoney Fork EMU - Starting at the intersection of State Hwy 2058 and U.S. Hwy 421 near Helton, the boundary then proceeds south along U.S. Hwy 421 to the intersection of U.S. Hwy 421 and U.S. Hwy 119 near Harlan, then west along U.S. Hwy 119 to the intersection of U.S. Hwy 119 and U.S. Hwy 25E. The boundary then goes north following U.S. Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to U.S. Hwy 421 at Helton, thus completing the boundary.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 9. Tagging and Checking Requirements. Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

(1) Record on a hunter's log the following information:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

(d) County of harvest; and[~~.~~]

(2) Check the harvested elk by calling (800) 245-4263 and recording the confirmation number on a hunter's log[~~; and~~

~~(3) If hunting in the elk zone during the elk quota hunts, attach a department-issued tag to the carcass before moving it~~].

Section 10. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), state forests, the[~~drawn applicant or recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), state forests,~~] Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National Forest within the restoration zone under the conditions of the permit received.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone[~~lie outside the restoration zone and~~] are subject to the requirements established in Section 11 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as established[~~set forth~~] in Section 6 of this administrative regulation.

(b) Firearms shall not be used to hunt elk, except that youths participating in the youth-only elk quota hunt may use any **deer hunting method authorized by 301 KAR 2:172 [**~~legal weapon~~**]** to take elk.

(c) The WMA shall be closed to all other hunting during the youth-only elk quota hunt.

Section 11. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person[~~of taking and seasons established in 301 KAR 2:172 shall apply to~~] taking elk outside of the restoration zone.

(a) A person taking an out-of-zone elk[~~In order to harvest an out-of-zone elk, a hunter shall be a legal deer hunter and~~] shall possess an out-of-zone elk permit **as established in 301 KAR 3:022**.

(b) A landowner shall be exempt from this permit requirement pursuant to KRS 150.170(4).

(2) Either sex elk may be taken and shall not count toward a person's[~~towards the~~] deer bag limit.

(3) Any elk harvested out-of-zone shall be telechecked pursuant to[~~Elk harvested out-of-zone shall be telechecked in accordance with~~] Section 9 of this administrative regulation.

Section 12. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

BENJY KINMAN, Deputy Commissioner
For JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: March 5, 2010
FILED WITH LRC: March 12, 2010 at 2 p.m.
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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, June 8, 2010)

401 KAR 5:045. Biochemically degradable wastes; treatment.

RELATES TO: KRS 224.10-100[~~(1), (5), (15), (19), (21), (23)~~], 224.70-100, 224.70-110

STATUTORY AUTHORITY: KRS [~~224.01-110(6),~~] 224.10-100(19), (21)[~~(17)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19) requires the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the Commonwealth. KRS 224.10-100(21) authorizes the cabinet to require technological levels of treatment and effluent limitations. This administrative regulation[~~is necessary to implement KRS 224.10-100(1), (5), (15), (19), (21), (23), 224.70-100 and 224.70-110. It~~] requires a minimum of secondary treatment or best conventional pollutant control technology for a facility that receives[~~where applicable for all facilities which received~~] biochemically degradable wastes[~~, and additional treatment in certain situations. The administrative regulation requires that such treatment facilities receiving such wastes reapply to the cabinet 150 days prior to the expiration of the current permit for a permit to continue operating~~].

Section 1. [~~Definitions. The following definitions and conditions apply to terms used in Sections 3 and 4 of this administrative regulation:~~

~~(1) "Grab sample" means a single instantaneous portion of the effluent.~~

~~(2) "Composite sample" means:~~

~~(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow;~~

~~(b) Not less than four (4) combined equal volume effluent portions collected over a period of eight (8) hours at intervals proportional to flow;~~

~~(c) An effluent portion collected continuously over a period of twenty-four (24) hours at a rate proportional to the flow; or~~

~~(d) An effluent portion consisting of a minimum of four (4) com-~~

~~bined equal volume grab samples taken approximately two (2) hours apart.~~

~~(3) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separated calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.~~

~~(4) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.~~

~~(5) the samples for determining a values of biochemical oxygen demand and suspended solids shall be composite samples. The samples for determining the values of fecal coliform bacteria and pH shall be grab samples and taken at the applicable frequency as noted in subsections (3) and (4) of this section.~~

~~(6) "Day" means a twenty-four (24) hour period.~~

~~(7) "Cabinet" means the Environmental and Public Protection Cabinet.~~

~~Section 2.~~] Applicability. (1) A facility that receives[~~All facilities discharging into waters of the Commonwealth which receive~~] an influent that[~~which~~] is biochemically degradable and discharges into waters of the Commonwealth shall provide a minimum of secondary treatment to that influent prior to its discharge.

(2) A facility[~~if other constituents are present, additional treatment may be required. Those facilities~~] subject to [~~best conventional pollutant control technology~~] treatment requirements established in[~~pursuant to~~] 401 KAR 5:080, Section 2[~~1(2)(a)2b~~] shall be exempt from the requirements of this administrative regulation.

Section 2. Secondary Treatment.[~~3. "~~]Secondary treatment shall be the[~~" is that~~] degree of treatment that[~~which~~] results in an effluent quality that[~~which~~] meets the [~~following~~] minimum requirements:

(1) Biochemical oxygen demand, five (5) days.

(a) The arithmetic mean of the values for effluent samples collected during a period of thirty (30) consecutive days shall not exceed thirty (30) milligrams per liter.

(b) The arithmetic mean of the values for effluent samples collected during a period of seven (7) consecutive days shall not exceed forty-five (45) milligrams per liter.

(2) Suspended solids. [~~These requirements shall be achieved except as provided for in subsection (3) of this section.~~]

(a) The arithmetic mean of the values for suspended solids in effluent samples collected during a period of thirty (30) consecutive days shall not exceed thirty (30) milligrams per liter.

(b) The arithmetic mean of values for suspended solids in effluent samples collected during a period of seven (7) consecutive days shall not exceed forty-five (45) milligrams per liter.

Section 3. Continuation of a Permit. A[~~(3) Suspended solids requirements for waste stabilization ponds which are employed as the sole process for secondary treatment and have a maximum facility design capacity of 2,000,000 gallons per day or less and where operation and maintenance data indicate that the requirements of subsection (2)(a) and (b) of this section cannot be achieved shall be equal to that which is achievable with best waste stabilization pond technology. Best waste stabilization pond technology is defined as the effluent concentration achieved ninety (90) percent of the time within the Commonwealth of Kentucky or appropriate contiguous geographical area by waste stabilization ponds that are achieving the levels of effluent quality established for biochemical oxygen demand in subsection (1) of this section. This suspended solids value will be determined by the cabinet.~~

~~Section 4. Additional requirements for all facilities discharging into the waters of the Commonwealth which receive an influent which is biochemically degradable is that degree of treatment which results in an effluent quality which meets the following minimum requirements:~~

~~(1) Fecal coliform bacteria.~~

~~(a) The geometric mean of the value for fecal coliform bacteria in samples collected during a period of thirty (30) consecutive days shall not exceed 200 colonies per 100 milliliter.~~

~~(b) The geometric mean of the values for fecal coliform bacteria in samples collected during a period of seven (7) consecutive days shall not exceed 400 colonies per 100 milliliters.~~

~~(c) For operational purposes paragraphs (a) and (b) of this subsection need only be met during the recreational season of May 1 through October 31. In other months the values stipulated in 401 KAR 5:031, Section 7(2)(a), shall be met.~~

~~(2) pH. The values for pH shall not be less than six (6) units nor more than nine (9) units.~~

~~Section 5. Treatment in excess of that required under Section 2 of this administrative regulation for influents which are biochemically degradable shall be required for a continuous facility discharge where:~~

~~(1) The cabinet determines that the receiving waters will not satisfy applicable water quality standards as a result of a facility discharge or discharges from multiple facilities.~~

~~(2) The cabinet determines that a facility lacks the sophistication of process to consistently produce the required effluent quality.~~

~~Section 6. (1) Any~~] person responsible for an existing facility that[~~as described in Section 2 of this administrative regulation which~~] receives biochemically degradable influent and discharges into waters of the Commonwealth shall apply[~~shall 150 days prior to the expiration of the current permit make application to the cabinet~~] for a permit to continue to discharge to the waters of the Commonwealth **not later than** 180 days prior to the expiration of the current permit.[~~(2) If the cabinet determines, from available information or information requested from the applicant, that an existing facility does not or may not produce an effluent with parameter measurements equal to or less than that specified in Sections 3 and 4 of this administrative regulation, it shall require the applicant to submit plans and specifications or other data showing how the facility will be brought into compliance.~~

~~(3) If the facility's effluent parameters are equal to or less than that required in Sections 3 and 4 of this administrative regulation, an operating permit shall be issued to the applicant.~~

~~(4) If the facility's effluent does not satisfy the requirements of Sections 3 and 4 of this administrative regulation, the cabinet may issue the applicant a permit to upgrade the facility, provided:~~

~~(a) No such permit shall be issued unless the cabinet has received and approved a compliance schedule to bring a facility into compliance at the earliest date.~~

~~(b) A compliance schedule shall contain a commitment from the applicant to achieve increments of progress to be completed on specified dates.~~

~~(c) At a minimum, the increments shall include a date for submitting any additional plans and specifications required for construction, a date for commencement of construction and a date for completion of construction.~~

~~(d) Upon request from the cabinet, the applicant shall provide the cabinet with periodic reports regarding progress towards compliance schedule increments.~~

~~(5) Failure to meet the dates set forth in a compliance schedule shall constitute a violation of KRS 224.70-110 unless an alternate date has been negotiated by the person responsible for a facility and has been approved in writing by the cabinet.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: February 9, 2010

FILED WITH LRC: February 11, 2010 at 3 p.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, June 8, 2010)

401 KAR 5:075. Cabinet review procedures for KPDES permits.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.10-420, 224.10-440, 224.10-470, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 124, 33 U.S.C. 1251-1387[~~et seq.~~]

STATUTORY AUTHORITY: KRS 224.10-100(19), 224.16-050, 224.70-110, 33 U.S.C. 1251-1387[et seq., 1342]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19) authorizes the [Environmental and Public Protection] cabinet to issue, continue in effect, revoke, modify, suspend or deny [under such conditions as the cabinet may prescribe,] permits to discharge into any waters of the Commonwealth. KRS 224.16-050(1) authorizes[establishes that] the cabinet to[may] issue federal permits pursuant to 33 U.S.C.[Section] 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387[(33 U.S.C. Section 1251 et seq.)] subject to the conditions imposed in 33 U.S.C.[Section] 1342(b) and (d). This administrative regulation establishes[sets forth] the procedures for[through which the cabinet will follow in] receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits.

Section 1. Review of the Application. An application for a KPDES permit shall be submitted and reviewed as established in 40 C.F.R. 124.3, effective July 1, 2009. [(1) Any person who requires a permit under the KPDES program shall complete, sign, and submit to the cabinet an application for the permit as required under 401 KAR 5:060, Section 1. Applications shall not be required for KPDES general permits. Operators who elect to be covered by a general permit shall submit written notification to the cabinet at the time the cabinet indicates in Section 3 of this administrative regulation.

(2) The cabinet shall not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by 401 KAR 5:060, Section 1.

(3) Permit applications shall comply with the signature and certification requirements of 401 KAR 5:060, Section 9.

(4) The cabinet shall review for completeness every application for a KPDES permit. Each application submitted by a KPDES new source or KPDES new discharger shall be reviewed for completeness by the cabinet within thirty (30) days of its receipt. Each application for a KPDES permit submitted by an existing source shall be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing source, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the cabinet may request additional information from an applicant if necessary to clarify, modify, or supplement previously submitted material. Requests for the additional information shall not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(6) If the cabinet decides that a site visit is necessary for any reason in conjunction with the processing of an application, the cabinet shall notify the applicant and a date shall be scheduled.

(7) The effective date of an application shall be the date on which the cabinet notifies the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major facility new discharger, the cabinet shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the cabinet intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing;

(d) Issue a final permit; and

(e) Complete any formal proceedings under this administrative regulation.

(9) Conflicts of interest.

(a) Any person who issues a permit shall be subject to the conflict of interest provisions of KRS 11A.020 and 11A.030. The director of the Division of Water shall not receive or have received during the previous two (2) years, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) Any person aggrieved by the issuance of a permit under the KPDES administrative regulations may challenge the permit pursuant to Section 13 of this administrative regulation if paragraph (a) of this subsection has been violated.

(c) The hearing officer shall remand any permit issued in violation of paragraph (a) of this subsection to the cabinet for reconsideration.

(d) Following remand, any cabinet employee who reconsiders the permit shall be subject to the conflict of interest provisions set forth in paragraph (a) of this subsection. The reconsideration shall require a new public comment period and public hearing only if information offered during earlier permit proceedings was excluded by the cabinet as a direct result of a conflict of interest.]

Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or Revocation. A KPDES permit modification, revocation and reissuance, or revocation shall be as established in 40 C.F.R. 124.5, effective July 1, 2009, except that **a request for a hearing shall be made [**appeals shall be heard**]** as established in Section 13 of this administrative regulation. [(1) Permits may be modified, revoked and reissued, or revoked either at the request of any interested person, including the permittee, or upon the cabinet's initiative. Permits may only be modified, revoked and reissued, or revoked for the reasons specified in 401 KAR 5:070, Sections 6 or 7. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the cabinet decides the request is not justified, the cabinet shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or revocation shall not be subject to public notice, comment, or hearings.

(3) If the cabinet tentatively decides to modify or revoke and reissue a permit under 401 KAR 5:070, Section 6, the cabinet shall prepare a draft permit under Section 3 of this administrative regulation incorporating the proposed changes. The cabinet may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the cabinet shall require the submission of a new application.

(a) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. If a permit shall be revoked and reissued under this section, the entire permit is reopened as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as described in 401 KAR 5:070, Section 6(3) shall not be subject to the requirements of this section.

(4) If the cabinet preliminarily decides to revoke a permit under 401 KAR 5:070, Section 7, the cabinet shall issue a notice of intent to revoke. A notice of intent to revoke shall be a type of draft permit which follows the same procedure as any draft permit prepared under Section 3 of this administrative regulation.]

Section 3. Draft Permits. Preparation or denial of a draft permit shall be as established in 40 C.F.R. 124.6, effective July 1, 2009. [(1) Once an application is complete, the cabinet shall preliminarily decide whether to prepare a draft permit or to deny the application.

(2) If the cabinet makes a preliminary decision to deny the permit application, the cabinet shall issue a notice of intent to deny. A notice of intent to deny the permit application shall be a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the cabinet's determination under Section 11 of this administrative regulation is that the preliminary decision to deny the permit application was incorrect, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (4) of this section.

(3) If the cabinet makes a preliminary decision to issue a

~~KPDES general permit, the cabinet shall prepare a draft general permit in accordance with subsection (4) of this section.~~

~~(4) If the cabinet decides to prepare a draft permit, the cabinet shall prepare a draft permit that contains the following information:~~

~~(a) All conditions under 401 KAR 5:065, Section 1;~~

~~(b) All compliance schedules under 401 KAR 5:070, Section 2;~~

~~(c) All monitoring requirements under 401 KAR 5:070, Section 3; and~~

~~(d) Effluent limitations, standards, prohibitions, and conditions under 401 KAR 5:057, 401 KAR 5:060, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080 and all variances that are to be included.~~

~~(5) All draft permits prepared by the cabinet under this section shall be accompanied by a fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The cabinet shall give notice of opportunity for a public hearing, issue a final decision, and respond to comments. A demand for a hearing may be made pursuant to KRS 224.10-420 and Section 13 of this administrative regulation following the issuance of a final decision.~~]

Section 4. Fact Sheets. A fact sheet shall be prepared as established in 40 C.F.R. 124.8, effective July 1, 2009. [~~(1) A fact sheet shall be prepared for every draft permit for a major KPDES facility or activity, for every KPDES general permit, for every KPDES draft permit that incorporates a variance or requires an explanation under subsection (3) of this section, and for every draft permit which the cabinet finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The cabinet shall send this fact sheet to the applicant and, on request, to any other persons.~~

~~(2) The fact sheet shall include, if applicable:~~

~~(a) A brief description of the type of facility or activity which is the subject of the draft permit;~~

~~(b) A quantitative and qualitative description of the discharges described in the application;~~

~~(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;~~

~~(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;~~

~~(e) A description of the procedures for reaching a final decision on the draft permit including:~~

~~1. The beginning and ending dates of the comment period under Section 5 of this administrative regulation and the address where comments will be received;~~

~~2. Procedures for requesting a hearing and the nature of that hearing;~~

~~3. Any other procedures under KRS 224.10-420 and Section 13 of this administrative regulation by which the public may participate in the final decision;~~

~~(f) Name and telephone number of a person to contact for additional information; and~~

~~(g) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guidelines or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.~~

~~(3)(a) If the draft permit contains any of the following conditions, an explanation of the reasons why the conditions are applicable:~~

~~1. Limitations to control toxic pollutants under 401 KAR 5:065, Section 2(5);~~

~~2. Limitations on internal waste streams under 401 KAR 5:065, Section 3(8);~~

~~3. Limitations on indicator pollutants under 401 KAR 5:080, Section 1(2)(a);~~

~~4. Limitations set on a case-by-case basis under 401 KAR 5:080, Section 1(2)(c)2; or~~

~~5. Limitations to meet the criteria for permit issuance under 401 KAR 5:055, Section 2(7).~~

~~(b) For every permit to be issued to a treatment works owned by a person other than the Commonwealth or its subdivisions, an explanation of the cabinet's decision on regulation of users under 401 KAR 5:065, Section 2(12).~~

~~(4) If appropriate, a sketch or detailed description of the location of the discharge described in the application.~~

~~(5) Justification for waiver of any application requirements under 401 KAR 5:060, Section 5.~~]

Section 5. Public Notice of Permit Actions and Public Comment Period. Public notice of a permit action and the public comment period shall be as established in 40 C.F.R. 124.10, effective July 1, 2009. [~~(1) Scope.~~

~~(a) The cabinet shall give public notice that the following actions have occurred:~~

~~1. A permit application has been preliminarily denied under Section 3(2) of this administrative regulation;~~

~~2. A draft permit has been prepared under Section 3(4) of this administrative regulation;~~

~~3. A hearing has been scheduled under Section 7 of this administrative regulation; or~~

~~4. A KPDES new source determination has been made in accordance with the definition in 401 KAR 5:002.~~

~~(b) Public notice shall not be required if a request for permit modification, revocation and reissuance, or revocation is denied under Section 2 of this administrative regulation. Written notice of that denial shall be given to the requester and to the permittee.~~

~~(c) Public notices may describe more than one (1) permit or permit action.~~

~~(2) Timing.~~

~~(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (1) of this section shall allow at least thirty (30) days for public comment.~~

~~(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.~~

~~(3) Methods. Public notice of activities described in subsection (1)(a) of this section shall be given by the following methods:~~

~~(a) The cabinet shall mail a notice to the persons listed in subparagraphs 1 through 5 of this paragraph. Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.~~

~~1. The applicant, except for KPDES general permittees, and Region IV, EPA.~~

~~2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Kentucky Historical Society and other appropriate government authorities, including any affected states;~~

~~3. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;~~

~~4. Any user identified in the permit application of a privately owned treatment works; and~~

~~5. Persons on a mailing list developed by:~~

~~a. Including those who request in writing to be on the list;~~

~~b. Soliciting persons for area lists from participants in past permit proceedings in that area; and~~

~~c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The cabinet may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to that request.~~

~~(b) For major permits and KPDES general permits, the cabinet shall publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;~~

~~(c) In a manner constituting legal notice to the public under Kentucky law; and~~

~~(d) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.~~

(4) Contents.

(a) All public notices. All public notices issued under this administrative regulation shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except for KPDES draft general permits under 401 KAR 5:055, Section 5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for KPDES general permits if there is no application;

4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, fact sheet, and the application;

5. A brief description of the comment procedures required by Sections 6 and 7 of this administrative regulation and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement shall be satisfied by a map or description of the permit area; and

7. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in paragraph (a) of this subsection, the public notice for a permit hearing under Section 7 of this administrative regulation shall contain the following information:

1. Reference to the date of previous public notices, relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under 401 KAR 5:055, Section 7(4). In addition to the information required under subsection (4)(a) of this section, public notice of a KPDES draft permit for a discharge if a 401 KAR 5:055, Section 7(4) request has been filed under 401 KAR 5:055, Section 3, shall include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under 401 KAR 5:065, Section 2(1) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under CWA Sections 301 or 306 (33 U.S.C. Sections 1311 or 1316); and

2. A statement that a 401 KAR 5:055, Section 7(4), request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

(5) In addition to the general public notice described in subsection (4)(a) of this section all persons identified in subsection (3)(a)1, 2, 3, and 4 of this section shall be mailed a copy of the fact sheet, the permit application (if any) and the draft permit (if any).]

Section 6. Public Comments and Requests for Public Hearings. Provisions for public comments and requests for a public hearing shall be as established in 40 C.F.R. 124.11, effective July 1, 2009.[During the public comment period provided under Section 5 of this administrative regulation, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section 12 of this administrative regulation.]

Section 7. Public Hearings. A public hearing shall be conducted as established in 40 C.F.R. 124.12, effective July 1, 2009. [(1) The cabinet shall hold a public hearing if a significant degree of public interest in a draft permit is found on the basis of requests. The cabinet also may hold a public hearing if, for instance, a hearing might clarify one (1) or more issues involved in the permit decision.

(2) Public notice of the hearing shall be given as specified in Section 5 of this administrative regulation.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section 5 of this administrative regulation shall automatically be extended to the close of any public hearing under this section. The cabinet may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.]

Section 8. Obligation to Raise Issues and Provide Information During the Public Comment Period. An obligation to raise issues and provide information during the public comment period shall be as established in 40 C.F.R. 124.13, effective July 1, 2009.[All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the cabinet's preliminary decision to deny an application, revoke a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under Section 5 of this administrative regulation. All supporting materials shall be included in full and may not be incorporated by reference, unless they consist of state or federal statutes and regulations, EPA or the cabinet's documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the record available to the cabinet as directed by the cabinet. A comment period longer than thirty (30) days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods, which may be established under Section 5 of this administrative regulation. Nothing in this section shall be construed to prevent any person aggrieved by a final permit decision from filing a demand for a hearing under KRS 224.10-420 and Section 13 of this administrative regulation.]

Section 9. Conditions Requested by the Corps of Engineers and Other Government Agencies. Conditions requested by the Corps of Engineers or another government agency shall be as established in 40 C.F.R. 124.59, established July 1, 2009. [(1) If during the comment period for a KPDES draft permit, the district engineer of the Corps of Engineers advises the cabinet in writing that anchorage and navigation of any of the waters of the Commonwealth would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the district engineer advises the cabinet that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the cabinet shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and shall not be made through the procedures provided in this administrative regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the KPDES permit for the duration of that stay.

(2) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the cabinet may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of KRS Chapter 224.

(3) In appropriate cases the cabinet may consult with one (1) or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.]

Section 10. Reopening of the Public Comment Period. The public comment period shall be reopened as established in 40 C.F.R. 124.14, effective July 1, 2009. [~~(1) If any data information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the cabinet may take one (1) or more of the following actions:~~

~~(a) Prepare a new draft permit, appropriately modified, under Section 3 of this administrative regulation;~~

~~(b) Prepare a revised fact sheet under Section 4 of this administrative regulation and reopen the comment period; or~~

~~(c) Reopen and extend the comment period under Section 5 of this administrative regulation to give interested persons the opportunity to comment on the information or arguments submitted.~~

~~(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 5 of this administrative regulation shall define the scope of the reopening.~~

~~(3) Public notice of any of the above actions will be issued under Section 5 of this administrative regulation.~~]

Section 11. Issuance and Effective Date of Permit. (1) After the close of the public comment period established in Section 5 of this administrative regulation, the cabinet shall make a determination to issue, deny, modify, revoke and reissue, or revoke a permit.

(a) The cabinet shall notify the applicant and each person who submitted written comments or requested notice of **the[**~~that~~**]** determination.

(b) The notification shall include reference to the procedures **to request a hearing to contest the determination [**~~for appealing the decision~~**]**.

(2) A final permit determination shall become effective thirty (30) days after the service of notice of the determination, unless:

(a) A later effective date is specified in the determination;

(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or

(c) Comments did not request a change in the draft permit, **in which case [**~~and if that occurs,~~**]** the permit shall become effective immediately upon issuance.

(3)**[**~~(a)~~**]** The determination, which is a condition precedent to demanding a hearing pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation, shall be the final permit decision. **[**~~(b) The thirty (30) day appeal period shall begin on the date the determination is entered by the cabinet and shall not begin on the date the permit becomes effective.~~**]**[~~(1) After the close of the public comment period established in Section 5 of this administrative regulation, the cabinet shall make a determination to issue, deny, modify, revoke and reissue, or revoke a permit.~~

~~(a) The cabinet shall notify the applicant and each person who submitted written comments or requested notice of that determination.~~

~~(b) The notification shall include reference to the procedures for appealing the decision.~~

~~(2) A final permit determination shall become effective thirty (30) days after the service of notice of the determination, unless:~~

~~(a) A later effective date is specified in the determination;~~

~~(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or~~

~~(c) Comments did not request a change in the draft permit, and if that occurs, the permit shall become effective immediately upon issuance.~~

~~(3)(a) The determination, which is a condition precedent to demanding a hearing pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation, shall be the final permit decision.~~**[**~~(b)The thirty (30) day appeal period shall begin on the date the determination is entered by the cabinet and shall not begin on the date the permit becomes effective.~~**]** [~~The issuance and effective date of a KPDES permit shall be as established in 40 C.F.R. 124.15, effective July 1, 2009~~].[~~(1) After the close of the public comment period under Section 5 of this administrative regulation, the cabinet shall issue, deny, modify, revoke and reissue, or revoke a permit. The cabinet shall notify the applicant and each person who has submitted written comments or requested notice of that determination. This notice shall include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or revoke a permit.~~

~~(2) A final permit decision shall become effective thirty (30) days after the service of notice of the decision under subsection (1) of this section, unless:~~

~~(a) A later effective date is specified in the decision;~~

~~(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or~~

~~(c) No comments requested a change in the draft permit, and if that occurs, the permit shall become effective immediately upon issuance.~~

~~(3) The determination which is a condition precedent to demanding a hearing under KRS 224.10-420(2) and Section 13 of this administrative regulation shall be the final permit decision. The thirty (30) day appeal period shall begin on the date the determination is entered by the cabinet and shall not begin on the date the permit decision becomes effective.~~]

Section 12. Response to Comments. Response to comments shall be as established in 40 C.F.R. 124.17, effective July 1, 2009. [~~(1) When any final permit decision is issued under Section 11 of this administrative regulation the cabinet shall issue a response to comments. This response shall:~~

~~(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and~~

~~(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. This response shall fully consider all comments resulting from any hearing conducted under this administrative regulation.~~

~~(2) The response to comments shall be available to the public. Any demand for a hearing on this response shall be filed according to procedures specified in KRS 224.10-420, 224.10-440, 224.10-470 and any administrative regulations promulgated pursuant thereto.~~]

Section 13. Hearings pursuant to[~~under~~] KRS 224.10-420. (1) A determination pursuant to[~~under~~] Section 11 of this administrative regulation [~~when issued by the cabinet~~] shall be subject to a demand for a hearing pursuant to KRS 224.10-420(2).

(2) **[**A**]**[Any] **[**~~person aggrieved by the issuance of a final permit may request~~**]**[demand] **[**~~a hearing pursuant to KRS 224.10-420(2).~~

~~(3)~~**]** A[~~Any~~] hearing held pursuant to this section shall be subject to the provisions of KRS 224.10-440 and 224.10-470.

(3)[~~(4)~~**]** Failure to raise an issue[~~issued~~] pursuant to Section 8 of this administrative regulation shall not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.10-420(2).

Section 14. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in this administrative regulation.

(2) "Cabinet" shall be substituted for "Director", "EPA", and "Regional Administrator" if the authority to administer the federal regulations cited in this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has been delegated authority to implement the federal regulations cited in this administrative regulation.

(4) "Mail", as used in 40 C.F.R. 124.10 and cited in Section 5 of this administrative regulation, shall include electronic transmission.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 7, 2010

FILED WITH LRC: May 10, 2010 @ 11 a.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, June 8, 2010)

401 KAR 8:150. Disinfection, filtration, and recycling.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.70-141.76, EO 2009-538 [~~2008-507, 2008-531~~]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R., 141.21, 141.65, 141.70-141.76, 141.130(d), 141.400-141.405, 141.500-141.605, 141.700-141.723, 142.16, 42 U.S.C. 300f-300j-26, EO 2009-538

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) **require [**~~authorize~~**]** the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. EO 2009-538, effective June 12, 2009, establishes [~~2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protections Cabinet and establish~~] the new Energy and Environment Cabinet. This administrative regulation establishes requirements for the disinfection, filtration, recycling, and testing of drinking water in a public or semipublic water system using surface water or groundwater not under the direct influence of surface water. This administrative regulation differs from the federal regulation by requiring filtration of[~~on~~] water supplies that have surface water sources and disinfection of water supplies whose source is groundwater.

Section 1. Disinfection. A public and semipublic water system shall provide disinfection, except as provided in this section. A semipublic water system shall comply with the requirements of this section for public water systems or meet the requirements of Section 2(2) of this administrative regulation.

(1) A public water system using groundwater or surface water as a source.

(a) A public water system that uses chlorine shall:

1. Use continuous automatic disinfection by chlorination;

2. Provide a minimum free chlorine residual of two-tenths (0.2) milligrams per liter, or ppm, throughout the distribution system measured as described in subsection (2) of this section;

3. Check free chlorine residuals daily at representative points throughout the system; and

4. Report the free chlorine residuals monthly pursuant to 401 KAR 8:020, Section 2(7)**(a)2[**~~(2)~~**]**.

(b)1. Disinfecting agents other than chlorine may be used pursuant to 40 C.F.R. 141.172(c)[~~, effective July 1, 2007,~~] **[**~~or if approved by the cabinet prior to January 1, 2009~~**]**.

2. If chloramination is used, a minimum combined residual of five-tenths (0.5) milligrams per liter, or ppm, shall be provided throughout the distribution system.

(2) A public water system using surface water as a source or groundwater under the direct influence of surface water shall provide disinfection treatment as established in 40 C.F.R. 141.72(b)[~~, effective July 1, 2007~~].

(3) If a disinfection residual fails to comply with Section 1(1) of this administrative regulation, the public shall be notified in accordance with 401 KAR 8:020, Section 2(9).

(4) Variances or exemptions shall not be granted for subsection (2) of this section.

Section 2. Filtration. (1) A public water system using a surface water source or a groundwater system with wells with variable or high turbidity due to characteristics of the raw water that may cause an adverse health effect shall establish a filtration system. The design for the system shall be submitted to the cabinet in accordance with 401 KAR 8:100 and shall comply with 40 C.F.R. 141.73[~~, effective July 1, 2007~~].

(2)(a) A semipublic water system shall provide a contact period of at least thirty (30) minutes between the chorine and the water to allow adequate time for disinfection, or may enter into a protocol with the cabinet whereby the filtration and disinfection requirements of this administrative regulation shall be achieved using filtration technology, disinfection technology, or a combination of both, if the technology shall achieve a ninety-nine and nine-tenths (99.9) percent (3-log) removal or inactivation of Giardia lamblia cysts and 99.99 percent (4-log) removal or inactivation of viruses.

(b) The protocol shall contain a schedule for maintenance and testing of the filtration and disinfection equipment to assure that the requirements of this subsection are met.

(c) Intensive bacteriological testing shall be included in the protocol.

(d) If surface water is a source of water, filtration shall be an element of the protocol.

(e) If groundwater not under the direct influence of surface water is the only source of water, a semipublic water system eligible under this subsection may enter into a protocol with the cabinet to demonstrate through a regular schedule of bacteriological testing that filtration or disinfection is not needed.

Section 3. Analytical and Monitoring Requirements. (1) Analytical requirements. Analyses required by this administrative regulation shall be conducted in accordance with the requirements of 40 C.F.R. 141.74(a)[~~, effective July 1, 2007~~].

(2) Monitoring requirements. A public water system that uses a surface water source or a groundwater source under the influence of surface water shall monitor in accordance with 40 C.F.R. 141.74(c)[~~, effective July 1, 2007~~].

Section 4. Disinfection of Treatment and Distribution System Facilities. New and Repaired Water Lines. (1) New construction projects and line extensions.

(a) Disinfection [~~of water lines~~]. A water treatment plant or distribution system, including storage distribution tanks, or extensions to existing systems, shall be thoroughly disinfected before being placed in service.

(b) A water distribution system shall disinfect with chlorine or chlorine compounds in amounts that shall produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours, and the disinfection shall be followed by a thorough flushing.

(c) Other methods and testing procedures that provide an equivalent level of protection may be used if the cabinet grants prior written approval in accordance with 40 C.F.R. 141.21[~~, effective July 1, 2007~~].

(d) A new water distribution line shall not be placed into service until bacteriological samples taken at the points specified in paragraph (f) of this subsection are examined and are shown to be negative following disinfection.

(e) A water treatment plant or distribution system shall submit to the cabinet results of bacteriological samples for each new construction project, replacement, or extension to existing systems, after the disinfection and flushing.

(f) A sample shall be taken in the newly constructed line at each of the following points:

1. Within 1,200 feet downstream of each connection point between the existing and new lines;

2. One (1) mile intervals; and

3. Each dead end, without omitting any branch.

(g) A new or routine replacement line shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses.

(h) Sample bottles shall be clearly identified as "special" construction tests, and the results submitted to the cabinet shall be clearly marked as "special" samples.

(i)1. Notification of analytical results shall be submitted to the cabinet with the routine monthly compliance bacteriological samples, unless the bacteriological samples are to be used to lift a boil water advisory.

2. Samples used to lift a boil water advisory shall be submitted to the cabinet as soon as results are known.

(2) Line repairs due to breaks or ruptures.

(a) The system shall thoroughly flush the break area and maintain at least a minimum disinfectant residual, pursuant to Section 1(1) of this administrative regulation.

(b) The system may leave the line in service or return the line to service before receiving bacteriological results and may forego a boil water advisory if:

1. Pressure is maintained;
2. The break area is thoroughly flushed; and
3. At least the minimum disinfectant residual is maintained, pursuant to Section 1(1) of this administrative regulation.

(c)1. The system shall take at least two (2) bacteriological tests, one (1) located before, or just upstream of, the break or rupture, and one (1) located behind, or just downstream of, the break or rupture, as close to the break or rupture as practical pursuant to 40 C.F.R. 141.21[~~, effective July 1, 2007~~]. Additional samples may be required, if necessary to be representative of the area affected by the break.

2. Sample bottles shall be clearly identified as "special" tests, and the results submitted to the cabinet shall be clearly marked as "special" samples

(d)1. Records of results shall be submitted to the cabinet with routine monthly compliance samples, unless the samples are required to lift a boil water advisory, and shall be maintained for one (1) year. 2. Samples needed to remove a boil water advisory shall be submitted to the cabinet as soon as the results are known.

(e) A water system shall notify the cabinet immediately if:

1. The pressure drops below twenty (20) pounds per square inch in the distribution system surrounding the break; or
2. A break or rupture occurs that requires more than eight (8) hours to repair, with the eight (8) hours beginning when the water system becomes aware of the break.

(f) Boil Water Advisories shall be issued in accordance with 401 KAR 8:020, Section 2(9).

(g) Reports pursuant to 401 KAR 8:020, Section 2(7)(c) shall not be required for a loss of pressure, break, or rupture occurring in service lines serving only one (1) single family residence.

(h)1. A community or nontransient noncommunity public water system shall maintain a log of all breaks or ruptures, which shall include the:

a. Date and location of the break or rupture;
b. Time it was discovered;
c. Population affected;
d. Length of time required to repair the break or rupture;
e. Date and time disinfectant residuals are detected; and
f. Date and time bacteriological samples are taken.

2. The log shall be available for inspection by the cabinet.

Section 5. Uncovered Facility. A public or semipublic water system subject to this administrative regulation shall not begin construction of an uncovered finished water storage facility.

Section 6. Recycling. A public water system shall comply with the requirements established in 40 C.F.R. 141.76[~~, effective July 1, 2007~~].

Section 7. In addition to the other requirements of this administrative regulation, for disinfection and filtration, a public water system that uses surface water as a source and that serves 10,000 or more persons, shall meet the requirements established in 40 C.F.R. 141.170 and[~~,~~] 141.172[~~,~~] through 141.175[~~, and 141.65, effective July 1, 2007~~].

Section 8. In addition to the other requirements of this administrative regulation for disinfection and filtration, a public water system that uses surface water as a source and that serves less than 10,000 persons shall meet the requirements established in 40 C.F.R. 141.500 through 141.571[~~, and 141.65, effective July 1, 2007~~].

Section 9. In addition to the other requirements of this administrative regulation for disinfection and filtration, a public water system that uses surface water as a source shall meet the requirements for enhanced treatment for Cryptosporidium as established in 40 C.F.R. 141 Subpart W, 141.700 through 141.723[~~, effective July 1, 2007~~].

Section 10. In addition to the other requirements of this administrative regulation for disinfection and filtration, a public water system that uses groundwater as a source shall comply with the requirements established in 40 C.F.R. 141.400 through 141.405[~~, 141.65, and 142.16(o), effective July 1, 2007~~].

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: March 11, 2010
FILED WITH LRC: March 12, 2010 at 1 p.m.
CONTACT PERSON: Abigail Powell, Regulations Coordinator. Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(As Amended at ARRS, June 8, 2010)

401 KAR 11:030. Wastewater treatment and collection system operators; classification and qualifications.

RELATES TO: KRS 224.73-110**[**~~, EO 2009-538~~**]**
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110**[**~~, EO 2009-538~~**]**
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of wastewater. **[**~~EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.~~**]** This administrative regulation establishes classification of wastewater treatment and collection operator certifications and establishes the qualifications for certification.

Section 1. Classification of Wastewater Operator Certifications. (1) Wastewater treatment certifications.

(a) Limited certification. As provided in KRS 224.73-110(5), an operator issued a limited certificate may have primary responsibility for a school wastewater treatment plant and collection system.

(b) Class I Treatment certification.

1. A Class I treatment operator may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to 50,000 gallons per day.

2. A Class I Treatment operator shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.

(c) [~~Class I Treatment certification with an Operator in Training designation.~~

~~1. A Class I Treatment operator with an Operator in Training designation may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to 50,000 gallons per day~~

~~2. A Class I Treatment operator with an Operator in Training designation shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.~~

~~(d)~~] Class II Treatment certification.

1. A Class II Treatment operator may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to two (2) million gallons per day.

2. A Class II Treatment operator shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.

(d)[~~(e)~~] Class III Treatment certification.

1. A Class III Treatment operator may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to seven and one-half (7 1/2) million gallons per day.

2. A Class III Treatment operator shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.

(e)[~~(f)~~] Class IV Treatment certification. A Class IV Treatment operator may have primary responsibility for a wastewater treatment plant of any design capacity.

(2) Wastewater collection certifications.

(a) Class I Collection certification.

1. A Class I Collection operator may have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons per day.

2. A Class I Collection operator shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity.

(b) [~~Class I collection certification with an Operator in Training designation.~~

~~1. A Class I Collection operator with an Operator in Training designation may have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons per day.~~

~~2. A Class I Collection operator with an Operator in Training designation shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity.~~

~~(c)~~] Class II Collection certification.

1. A Class II Collection operator may have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to two (2) million gallons per day.

2. A Class II Collection operator shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity.

(c)[~~(d)~~] Class III Collection certification.

1. A Class III Collection operator may have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to seven and one-half (71/2) million gallons per day.

2. A Class III Collection operator shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity.

(d)[~~(e)~~] Class IV Collection certification. A Class IV Collection operator may have primary responsibility for any wastewater collection system.

(3) Operator in Training designations.

(a) Except as provided in paragraphs (c) and (d) of this subsection, a certified operator with an Operator in Training designation shall not have primary responsibility of a wastewater treatment plant or wastewater collection system.

(b) A certified operator with an Operator in Training designation shall work under the direct supervision of a certified operator who works at the same facility and has obtained a certification level that is equal to or greater than the certification level required to serve in primary responsibility of the facility.

(c) A wastewater Class I Treatment operator with an Operator in Training designation who operates a wastewater treatment plant owned by the operator that serves only one (1) residence:

1. May have primary responsibility for that system; and

2. Shall be exempt from paragraph (b) of this subsection and 401 KAR 11:050, Section 1(2)(b) and (9)(a)3.

(d) If a certified operator also has been issued a wastewater treatment or collection certification without an Operator in Training designation, the operator may have primary responsibility for a wastewater treatment plant or collection system as provided by this section for the certifications that do not have an Operator in Training designation.

Section 2. Wastewater Operator Qualifications: Experience, Education, and Equivalencies. An individual desiring to become a certified operator shall meet the following minimum qualifications prior to the cabinet approving the individual to take a certification examination as provided in 401 KAR 11:050.

(1) The education and experience requirement for each class of wastewater treatment certifications shall be[~~is~~] as follows:

(a) Limited certification.

1. Education. A minimum level of education shall not be required.

2. Experience. A minimum level of experience shall not be required.

(b) Class I Treatment certification.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. One (1) year of acceptable operation of a wastewater treatment plant shall be required.

(c) [~~Class I Treatment certification with an Operator in Training designation.~~

~~1. Education. A high school diploma or general education development (GED) certificate shall be required; and~~

~~2. Experience. Experience shall not be required.~~

~~(d)~~] Class II Treatment certification.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Two (2) years of acceptable operation of a wastewater treatment plant shall be required.

(d)[~~(e)~~] Class III Treatment certification.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Three (3) years of acceptable operation of a wastewater treatment plant with one (1) year of that experience in a wastewater treatment plant with a design capacity greater than 50,000 gallons per day shall be required.

(e)[~~(f)~~] Class IV Treatment certification.

1. Education. A baccalaureate degree in engineering, science, or equivalent shall be required; and

2. Experience. At least five (5) years of acceptable operation of a wastewater treatment plant shall be required.

a. Three (3) years of the required experience in a wastewater treatment plant with a design capacity greater than two (2) million gallons per day shall be required; and

b. At least two (2) years of primary responsibility in a wastewater treatment plant with a design capacity greater than two (2) million gallons per day shall be required.

(2) The educational and experience qualifications for wastewater collection certifications shall be as follows:

(a) Class I Collection certification.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. One (1) year of acceptable operation of a wastewater collection system shall be required.

(b) [~~Class I Collection certification with an Operator in Training designation.~~

~~1. Education. A high school diploma or general education development (GED) certificate shall be required; and~~

~~2. Experience. Experience shall not be required.~~

~~(c)~~] Class II Collection certification.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Two (2) years of acceptable operation of a wastewater collection system shall be required.

(c)[~~(d)~~] Class III Collection certification.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Three (3) years of acceptable operation of a wastewater collection system with one (1) year of that experience in a wastewater collection system that transports wastewater to a treatment plant with a design capacity of greater than 50,000 gallons per day shall be required.

(d)[~~(e)~~] Class IV Collection certification.

1. Education. A baccalaureate degree in engineering; environmental technology; biological, physical, or chemical sciences; or equivalent shall be required; and

2. Experience. At least five (5) years of acceptable operation of a wastewater collection system shall be required.

a. Three (3) years of the required experience in a wastewater collection system that transports wastewater to a treatment plant with a design capacity of greater than two (2) million gallons per day shall be required; and

b. At least two (2) years of primary responsibility in a wastewater collection system that transports wastewater to a treatment plant with a design capacity of greater than two (2) million gallons per day shall be required.

(3) The educational and experience qualifications for Operator in Training designations shall be as follows:

(a) Class I Treatment and Class I Collection certifications.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Experience shall not be required.

(b) All other applicants for the classifications identified in Section 1(1) and (2) of this administrative regulation:

1. Shall have successfully qualified for and passed the certifi-

cation exam of the same type classification at one (1) level lower than the Operator in Training designation being pursued; and

2. Shall not have been subject to disciplinary action as provided by 401 KAR 11:050, Section 4.

(4) Substitutions. The cabinet shall allow the following substitutions for the qualifications specified in subsections (1) and (2) of this section:

(a) Education in environmental engineering; environmental technology; and biological, physical, or chemical sciences shall be substituted if the substitution does not exceed fifty (50) percent of the required experience.

1. An associate degree may substitute for two (2) years of experience.

2. A baccalaureate degree may substitute for four (4) years of experience.

3. Education that did not result in a degree in a related field **shall [**~~may~~**]** be substituted for the required experience as follows:

a. Ten (10) contact hours, one (1) Continuing Education Unit[~~Requirement~~], or one (1) postsecondary education quarter hour with a passing grade **shall [**~~may~~**]** substitute for 0.022 years of experience**.**

b. One (1) postsecondary education semester hour with a passing grade **shall [**~~may~~**]** substitute for 0.033 years of experience**.**

4. Education applied to the experience requirements established in subsections (1) and (2) of this section shall not be applied to the education requirement.

(b) Experience **shall [**~~may~~**]** be substituted for the educational requirement as follows:

1. One (1) year of operational experience at a treatment plant **shall [**~~may~~**]** substitute for one (1) year of education.

2. One (1) year of collection system experience **shall [**~~may~~**]** substitute for one (1) year of education.

3. The cabinet may allow partial substitution of the education requirement by experience in maintenance, laboratory analysis, or other work related to the collection, treatment or distribution of drinking water or wastewater. To establish how much experience shall be accepted, the cabinet shall determine the degree of technical knowledge needed to perform the work and the degree of responsibility the applicant had in the operation of the system.

4. Experience applied to the education requirement established in subsections (1) and (2) of this section shall not be applied to the experience requirement.

(c) Collection system and treatment experience may be substituted as follows:

1.a. Four (4) years of collection system experience shall be considered equivalent to one (1) year of treatment experience.

b. This substitution shall not account for more than fifty (50) percent of the experience required by subsection (1) of this section.

2. One (1) year of treatment experience shall be considered equivalent to one (1) year of collection system experience.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: March 11, 2010

FILED WITH LRC: March 11, 2010 at 4 p.m.

CONTACT PERSON: Julia Kays, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email Julia.Kays@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, June 8, 2010)

401 KAR 47:090. Solid waste permit fees.

RELATES TO: KRS 224.10, 224.40, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100**(20)**, 224.10-220, EO 2008-507, 2008-531

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) **authorizes the cabinet to[**~~states that the cabinet may~~**]** establish by administrative regulation a schedule of fees for the cost of processing permit applications. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes a schedule of fees for solid waste permit applications. [~~224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. This chapter establishes standards for solid waste sites or facilities. The purpose of this administrative regulation is to establish a fee schedule for the issuance and modification of solid waste disposal permits or variances.~~]

Section 1. Applicability.[~~(1)~~] The provisions of this administrative regulation shall apply to a person[~~the owner or operator of each solid waste site or facility~~] required to apply for a solid waste site or facility permit, permit renewal, or modification[~~or exemption~~], except for persons applying for publicly-owned facilities.

Section 2. Permit Application Review Fee. **[**~~(1)~~**]** A person required to apply for a solid waste site or facility permit shall include, with the application, a check or money order made payable to Kentucky State Treasurer for the filing fee based on the following tables:

TABLE I - Disposal Facility Application Fees

Application Type	**Reference**	Technical Review Time	Application Fee
Contained or construction/demolition debris landfill notice of intent to apply	**401 KAR 47:170**	30 working days	$2,500
Residual landfill notice of intent to apply	**401 KAR 47:170**	30 working days	$2,000
Landfill administrative application	**401 KAR 47:180**	60 working days	$10,000
Contained landfill technical application	**401 KAR 47:190**	90 working days	$25,000
Contained landfill construction progress report	**KRS 224.40-310**	10 calendar days	$6,000
Construction/demolition debris landfill technical application	**401 KAR 47:190**	90 working days	$15,000
Construction/demolition debris landfill construction progress report	**KRS 224.40-310**	10 calendar days	$4,500
Residual landfill technical application	**401 KAR 47:170**	90 working days	$12,000
Residual landfill construction progress report	**KRS 224.40-310**	10 calendar days	$3,500
Vertical expansion, less than 2 years additional capacity	**401 KAR 47:130**	180 calendar days	$3,000

Groundwater monitoring well, closure, and engineering feature construction progress report	**KRS 224.40-310**	90 calendar days	$3,000
Vertical expansion, greater than 2 years additional capacity	**401 KAR 47:130**	180 calendar days	$6,000
Landfill minor modification application	**401 KAR 47:130**	180 calendar days	$2,500
Liner reduction or variance request	**KRS 224.40-310 or 401 KAR 30:020**	180 calendar days	$6,000
Add or delete source for a contained landfill or construction/demolition debris landfill	**401 KAR 47:130**	180 calendar days	$3,000
Construction permit, only, 5 year renewal	**KRS 224.40-310**	180 calendar days	$4,000
New or major modification to a incinerator or waste-to-energy permit	**KRS 224.40-310**	90 calendar days	$20,000
Incinerator, waste-to-energy, or nonlandfill liner solid waste construction progress report	**KRS 224.40-310**	90 calendar days	$3,000

TABLE II - Registered Permit-by-Rule Application Fees

New or Modification Application Type	**Reference**	Technical Review Time	Application Fee
New or modification to a transfer station or convenience center	**401 KAR 47:110**	90 calendar days	$2,500
New[,] or modification to a less-than-one acre construction/demolition debris landfill	**401 KAR 47:110**	90 calendar days	$4,500
New or modification to a compost facility	**401 KAR 47:110**	90 calendar days	$3,000
New or modification to a Class I landfarm facility	**401 KAR 47:110**	90 calendar days	$4,000

TABLE III - Application Fees for Other Types of Facilities

New or Modification Application Type	**Reference**	Technical Review Time	Application Fee
New, substantial expansion, or major modification to a Class II landfarm facility	**401 KAR 48:200**	180 calendar days	$17,000
Class II landfarm facility permit minor modification	**401 KAR 47:130**	180 calendar days	$5,000
New or modification to a research, demonstration and development permit	**401 KAR 47:150**	180 calendar days	$7,000
Emergency permit	**401 KAR 47:150**	90 calendar days	$600
Beneficial reuse determination	**401 KAR 47:150**	90 calendar days	$750

TABLE IV - Facility Ownership Fees

New or Modification Application Type	**Reference**	Technical Review Time	Application Fee
Name or ownership change, only	**401 KAR 47:130**	180 calendar days	$500
Bond revision, only	**401 KAR 48:310**	90 calendar days	$250

Section 3. Failure To Submit Fee. (1) If the applicant fails to submit the fee established in Section 2 of this administrative regulation during the administrative completeness review established in 401 KAR 47:025, Section 3, the cabinet shall deny the permit application.

(2) If the applicant for a new landfill or horizontal expansion of an existing landfill fails to submit the fee established in Section 2 of this administrative regulation during the technical review period established in KRS 224.40-310(10), the cabinet shall deny the permit application.

Section 4. Refunds. (1) Except as provided in subsection (2) of this section, if the technical review time (TRT) of a permit application by the cabinet exceeds the TRT listed in Section 2 of this administrative regulation established pursuant to KRS 224.40-310(10)(a), (b), or (c) or 401 KAR 47:025, Section 3[4], the owner or operator shall receive the refund of the application fee listed in Section 2 of this administrative regulation pursuant to KRS 224.10-220(3).

(2) Exceptions to subsection (1) of this section shall include:

(a) An order of agreement allowed pursuant to KRS 224.40-310(10)(e); or

(b) The agreement allowed by 401 KAR 47:025, Section 3(2)[~~4(2)~~].

Section 5. Annual Permit Renewal Fee. (1) The owner or operator shall submit the amount of the annual permit renewal fee by the due date established for the type of facility pursuant to Table V of this administrative regulation.

(2)(a) The owner or operator shall submit the fee with Annual

Solid Waste Permit Renewal Fee, DEP 7119, May 2009.

(b) If the owner or operator fails to submit the annual permit renewal fee required by Table V, the cabinet shall suspend the permit until the payment is received.

(c) If more than one (1) type of permitted facility is located on one (1) site, the owner or operator shall submit 100 percent of the fee for the facility handling or disposing of the most waste in the previous calendar year and fifty (50) percent of the fee for the other types of facilities.

TABLE V - Annual Permit Renewal Fee

Permit type	Due date for fee	Annual fee
Contained landfill	December 31	$7,500
Construction/demolition debris landfill	December 31	$5,000[~~$7,000~~]
Residual landfill	December 31	$3,000[~~$6,500~~]
Incinerator or waste-to-energy	December 31	$1,000[~~$4,000~~]
Transfer station or convenience center	March 31	$1,000[~~$1,200~~]
Less-than-one acre construction/demolition debris landfill receiving 5,000 or more tons of waste per year	September 30	$3,000
Less-than-one (1) acre construction/demolition debris landfill receiving more than 1,000 tons of waste per year and less than 5,000 tons of waste per year	September 30	$1,500
Less-than-one (1) acre construction/demolition debris landfill receiving 1,000 or less tons of waste per year	September 30	$500
Compost facility	December 31	$500[~~$3,000~~]
Class I landfarming facility	December 31	$500[~~$3,500~~]
Class II landfarming facility	December 31	$1,000[~~$6,500~~]
Research, demonstration and development permit	December 31	$1,000[~~$6,000~~]

(3)**(a)** Beginning January 1, 2011, all facilities **operating under a registered-permit-by-rule; a Class II landfarming permit; or a research, demonstration and development (RDD) permit shall pay the annual permit fee listed in Table V.**

(b) All other solid waste disposal facilities for which an annual permit renewal fee is listed in Table V shall begin paying the annual permit renewal fee upon expiration of a permit with an effective date prior to September 1, 2010.

[~~shall pay the annual permit renewal fee listed in Table V of this administrative regulation.~~**]**

Section 6. [~~Inflation. (1) The permit fees in this administrative regulation shall be adjusted each July, beginning July 1, 2010.~~

~~(2) For each calendar year, upon publication of the "Annual Consumer Price Index for all Urban Consumers" by the U.S. Department of Labor, the permit fees shall be adjusted by applying the annual increase in the consumer price index to the fee level from the previous year.~~

~~(3) Adjusted fee amounts for each year shall be posted on the division's Web site at www.waste.ky.gov/branches/sw/.~~

~~Section 7.~~] Incorporation by Reference. (1) "Annual Solid Waste Permit Renewal Fee", DEP 7119, May 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second[~~2nd~~] Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the division's Web site at www.waste.ky.gov. [~~(2) The provisions of this administrative regulation shall apply to solid waste site or facility permit applications submitted on or after the effective date of this administrative regulation, and to such applications which are not complete as determined by the cabinet, by the effective date of this administrative regulation. Solid waste site or facility permit applications which are complete as determined by the cabinet, by the effective date of this administrative regulation, shall be subject to the provisions of 401 KAR 47:090E as in effect on January 16, 1990.~~

~~Section 2. Filing Fees. (1) Any owner or operator may submit a notice of intent to apply for a solid waste facility permit, permit modification, or variance for initial review and shall include with the notice of intent to apply a check or money order for the filing fee determined by the schedule below:~~

~~Application Type~~	~~Fee~~
~~Review of the notice of intent to apply to determine site suitability~~	~~$500~~
~~Preliminary permit modification application review to determine site suitability for expansion~~	~~$500~~
~~Preliminary request for variance of design criteria~~	~~$500~~

~~(2) Any owner or operator who submits an administrative phase of a permit application for a new solid waste site or facility or an application for expansions to existing facility sites shall include with the application a check or money order for the filing fees determined by this subsection.~~

~~(a) The filing fees listed below for the administrative phase of a permit application shall be submitted with the application:~~

~~Solid Waste Facility Type~~	~~Fee~~
~~Construction/demolition debris landfill~~	~~$ 5,000~~
~~Contained landfill~~	~~$10,000~~
~~Residual landfill~~	~~$ 2,500~~

~~(b) Any owner or operator who submits a technical phase of a permit application for a solid waste site or facility shall include with the application the filing fee listed below:~~

~~Solid Waste Facility Type~~	~~Fee~~
~~Construction/demolition debris landfill~~	~~$5,000~~
~~Contained landfill~~	~~$5,000~~
~~Residual landfill~~	~~$2,500~~

~~(3) Upon notification to the cabinet that construction for any phase has been completed, any owner or operator who notifies the cabinet that the facility has been constructed and requests the issuance of a permit to operate, or a modification to a permit to operate a solid waste site or facility, shall include with the request a check or money order in the amount of the filing fee, assessed in accordance with the following schedule:~~

~~Solid Waste Facility Type~~	~~Fee~~
~~Contained landfill~~	~~$800~~
~~Residual landfill~~	~~$500~~
~~Residential landfill~~	~~$500~~
~~Landfarming facility~~	~~$500~~
~~Inert landfill~~	~~$200~~
~~Construction/demolition debris landfill~~	~~$500~~

~~(4) Any owner or operator who submits an application for renewal of an existing solid waste facility permit, shall include with the application a check or money order in an amount equal to the number of years for which the facility permit shall be renewed multiplied by the amounts listed below:~~

~~Solid Waste Facility Type~~	~~Amount per Year~~
~~Inert landfill~~	~~$300~~
~~Residential landfill receiving less than 200 tons per day~~	~~$500~~
~~Residential landfill receiving 200 or more tons per day~~	~~$3,000~~
~~Construction/demolition debris landfill receiving less than 200 tons per day~~	~~$500~~
~~Construction/demolition debris landfill receiving 200 or more tons per day~~	~~$3,000~~
~~Contained landfill~~	~~$3,000~~

~~Residual landfill~~	~~$500~~
~~Landfarming facility~~	~~$300~~

~~(5) Any renewal for a construction permit for which fees are not required under subsection (4) of this section shall be $500. `(6) Any owner or operator who submits an application for a solid waste facility permit modification shall include with the application a check or money order for the fee listed below:~~

~~(a) $1,000 for modifications involving operating methods or proposed closure.~~

~~(b) $50 for modifications for additional wastes not listed in the approved permit application.~~

~~(c) $500 for a request for variances from existing permit requirements.~~

~~(d) $500 for change of ownership of an existing permitted facility.~~

~~(7) Any owner or operator who submits an application for the following permits shall include a check or money order as listed below:~~

~~(a) $1,000 for application for closure of a solid waste site not under a current solid waste facility permit.~~

~~(b) $500 for application for approval of emergency permits.~~

~~(c) $500 for application for approval of research, development and demonstration permits.~~

~~(d) $5,500 for application for approval of landfarming permits.~~

~~(8) Filing fees are not refundable if an application for a permit, modification, or variance is denied or an application is withdrawn after the review is initiated.~~

~~(9) Submittal of fees. The required fees shall be submitted to the cabinet. All checks or money orders shall be made payable to the Kentucky State Treasurer.~~]

HENRY C.A. LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: August 12, 2009
FILED WITH AGENCY: August 15, 2009 at 10 a.m.
CONTACT PERSON: George Gilbert, P.E., Division of Waste Management, 200 Fair Oaks Lane, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email George.Gilbert@ky.gov.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS, June 8, 2010)

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) **"Apportioned" means to divide and distribute fees to member International Registration Plan jurisdictions according to mileage operated.**

(2) "Amended return" means a corrected tax return.

(3) "Base jurisdiction" or "base state" [~~"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.

(4) "Ceased operation" means that the licensee no longer operates in Kentucky.

(5) "Combined licensed weight" means the greater of the registered weight of the vehicle or the maximum gross weight of the vehicle and load.

(6)[~~(2)~~**]** "Fuel tax license" means either an IFTA license or a KIT license.

(7)[~~(3)~~**]** "IFTA" means the International Fuel Tax Agreement.

(8)[~~(4)~~**]** "IFTA license" means a motor fuel tax license issued in accordance with the IFTA Articles of Agreement and the IFTA [~~"~~]Procedures Manual.[~~"~~]

(9)[~~(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.

(10)[~~(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).

(11)[~~(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).

(12)[~~(8)~~**]** "Motor carrier" **is defined by [**~~means as defined in~~**]** KRS 138.655(5).

(13)[~~(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 **does[**~~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.

(14)[~~(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.

(15)[~~(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 **or intrastate** 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 **the licensee's [**~~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 **shall[**~~may~~**]**[~~shall~~] be reported on Vehicle Additions or Deletions Subject to **Kentucky Weight Distance (**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 **Kentucky Weight Distance (**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 **a** driver to a licensee or other lessee **shall[**~~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 **a**[~~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 **or[**~~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 **shall[**~~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 **a notarized**[~~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 **Use** Tax **Return [**~~Report~~**]**["] IFTA 100**-MN and IFTA Quarterly Fuel Use Tax Schedule, IFTA-101**[~~, 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.

(2)[~~(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.

(3)[~~(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 cabi-

net 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.

(4)[~~(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 **shall[**~~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 **to** 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 **established [**~~defined~~**]** in paragraph (a) of this subsection shall be made on **Application for [**~~form~~**]** [~~TC 95-214, "~~]Fuel Tax Refund for **Use of** Power Take**-**

off **Equipment**["], 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 **Kentucky Weight Distance (**~~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 **Use** Tax Return[~~Report~~]" IFTA-100-MN, **April 2006 [**~~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,~~] "**Application for** Fuel Tax Refund for **Use of** Power Take-off", 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.
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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, June 8, 2010)

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**(1)** gives the Kentucky Board of Education the management and control of the common schools. KRS 156.160**(1)** 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. **(1)** Local districts and schools shall use uniform academic course codes**, listed and described in the Academic Course Code List,** to classify all courses offered in each school when reporting to the Kentucky Department of Education.

(2) Reporting to the Kentucky Department of Education shall include the listing and linking of uniform academic courses **if[**~~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.

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.

LABOR CABINET
Kentucky Workers' Compensation Funding Commission
(As Amended at ARRS, June 8, 2010)

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"**:**

(a)[~~,~~**]** 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**;**

(b) [~~. (12) "Premiums received",~~**]** For insurance companies, is defined by KRS 342.0011(25)(a).

(12)[~~(13)~~**]** "Return premiums", for insurance companies, is defined by KRS 342.0011(25)(d).

(13)[~~(14)~~**]** "Self-insurance year", for a group self-insurer, is defined by KRS 342.0011(27).

(14)[~~(15)~~**]** "Severance or processing of coal" is defined by KRS 342.0011(23)(a).

(15)[~~(16)~~**]** "SIC code" is defined by KRS 342.0011(29).

(16)[~~(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**, in accordance with KRS 342.122(4)**.

(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,, **in accordance with the provisions of KRS 342.122(4).** [~~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, **in accordance with KRS 342.122(2).** [~~,~~] **[**~~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**, if not postmarked in accordance with KRS 342.122(2),** 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, **in accordance with KRS 342.1221. [**~~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**, in accordance with KRS 131.340 and 802 KAR 1:010**.

(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

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.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, June 8, 2010)

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 de-

partment 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 **B3 Building Plans Examiner** **[**~~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 l, 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.

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 Plumbing
(As Amended at ARRS, June 8, 2010)

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: **KRS 318.130 requires the Office of Housing, Buildings, and Construction to promulgate administrative regulations which [**~~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 **administrative** 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 **at least [**~~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; **and**

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) **A** staffing report detailing personnel levels, personnel costs**,** and personnel goals; **and**

(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.

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

NONE

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 3:100. Administrative wage garnishment.

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

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

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

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

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

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

(a) The name and address of the debtor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A party shall request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

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

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

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

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

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

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

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

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

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

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

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

1. All notices, pleadings, motions, and intermediate rulings;

2. Any prehearing order;

3. Evidence received and considered;

4. A statement of matters officially noticed;

5. Proffers of proof and objections and rulings thereon;

6. Ex parte communications placed upon the record by the hearing officer;

7. A recording or transcript of the proceedings; and

8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

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

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

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

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

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

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;

2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and

3. A statement of whether the petitioner believes that oral argument to the board is necessary.

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

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

1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and

2.a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;

b. Reject or modify, in whole or in part, the hearing officer's decision; or

c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:

(i) In violation of constitutional or statutory provisions;

(ii) In excess of the statutory authority of the agency;

(iii) Without support of substantial evidence on the whole record;

(iv) Arbitrary, capricious, or characterized by abuse of discretion; or

(v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.

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

(a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and

(b) Be construed to stay the use of another remedy.

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

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

(b)1. Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:

a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;

b. Discuss the possibility of informal resolution of the dispute;

c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and

d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

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

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

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

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

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

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

(d)1. Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.

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

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

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

1. Noncompliance with this subsection;

2. Failure of the authority to:

a. Timely appoint a hearing officer; or

b. Respond to a request for inspection of records; or

3. Failure of the debtor to submit information in accordance with paragraph (b) of this subsection.

(3) Order of proceeding.

(a) The hearing officer shall:

1. Convene an in-person or telephonic hearing;

2. Identify the parties to the action and the persons participating;

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

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

5. Accept into evidence any documentary evidence not objected to;

6. Solicit opening statements; and

7. Proceed with the taking of proof.

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

(4) Rules of evidence.

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

1. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the commonwealth.

2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.

3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.

4. A copy of a document shall be admissible if:

a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or

b. It is admitted without objection.

5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

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

(c) The hearing officer:

1. May take official notice of:

a. Statutes and administrative regulations;

b. Facts which are not in dispute; and

c. Generally-recognized technical or scientific facts;

2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and

3. Shall give each party an opportunity to contest facts officially noticed.

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

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

(6) Burden of proof.

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

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

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

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

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

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

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

(a) Shall:

1. Consider the matter; and

2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) May reverse the prior decision if the debtor presents evidence that:

1. Circumstances have changed or new information is available; or

2. The prior decision:

a. Substantially disregarded or ignored the defense; or

b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(8), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial

hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the following presumptions.

1. Withholding of an amount of disposable pay shall constitute an extreme financial hardship if:

a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	$10,830
2	$14,570
3	$18,310
4	$22,050
5	$25,790
6	$29,530
7	$33,270
8	$37,010
Each additional person	Add $3,740

b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	$13,530
2	$18,210
3	$22,890
4	$27,570
5	$32,250
6	$36,930
7	$41,610
8	$46,290
Each additional person	Add $4,680

c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	$12,460
2	$16,760
3	$21,060
4	$25,360
5	$29,660
6	$33,960
7	$38,260
8	$42,560
Each additional person	Add $4,300

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Owned dwelling	1,958	1,214	1,927	2,316	3,143	4,123	5,607	6,880	14,405
Rented dwelling	3,932	3,546	3,562	4,059	3,776	3,602	3,856	3,445	1,926
Other lodging	215	90	105	150	250	526	348	882	2,140
Utilities, fuels, and public services	1,666	1,805	2,210	2,569	3,061	3,342	3,647	4,046	5,551
Household operations	214	237	385	376	552	555	840	885	1,996
Housekeeping and miscellaneous supplies	297	270	245	310	423	426	544	669	936
Household furnishings and equipment	407	636	535	601	760	1,105	1,654	1,485	3,144
Vehicle purchases (net outlay)	303	384	656	1,316	2,203	1,285	1,481	3,080	4,264
Gasoline and motor oil	786	684	694	947	1,341	1,757	2,099	2,480	3,420
Vehicle maintenance and repairs	252	299	232	342	381	580	617	778	1,217
Vehicle insurance	693	70	379	919	999	779	1,141	1,512	1,706
Vehicle rental, lease, license and other charges	207	103	172	155	282	287	379	483	1,295
Public transportation	534	166	195	277	358	409	475	516	1,423

[~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Annual Expenditures~~									

~~Owned dwelling~~	~~2,185~~	~~1,123~~	~~1,872~~	~~2,224~~	~~2,973~~	~~4,271~~	~~5,283~~	~~6,943~~	~~14,376~~
~~Rented dwelling~~	~~3,769~~	~~3,648~~	~~3,756~~	~~4,276~~	~~3,917~~	~~3,779~~	~~3,868~~	~~2,998~~	~~1,758~~
~~Other lodging~~	~~215~~	~~153~~	~~92~~	~~191~~	~~203~~	~~385~~	~~365~~	~~664~~	~~1,852~~
~~Utilities, fuels, and public services~~	~~1,544~~	~~1,568~~	~~2,114~~	~~2,620~~	~~2,844~~	~~3,166~~	~~3,396~~	~~3,970~~	~~5,219~~
~~Household operations~~	~~272~~	~~185~~	~~370~~	~~387~~	~~396~~	~~465~~	~~682~~	~~738~~	~~1,926~~
~~Housekeeping and miscellaneous supplies~~	~~173~~	~~319~~	~~242~~	~~273~~	~~368~~	~~446~~	~~480~~	~~630~~	~~893~~
~~Household furnishings and equipment~~	~~529~~	~~448~~	~~446~~	~~487~~	~~743~~	~~1,108~~	~~1,576~~	~~1,781~~	~~3,308~~
~~Vehicle purchases (net outlay)~~	~~782~~	~~133~~	~~687~~	~~590~~	~~1,516~~	~~1,709~~	~~1,302~~	~~3,032~~	~~5,044~~
~~Gasoline and motor oil~~	~~699~~	~~564~~	~~591~~	~~905~~	~~1,274~~	~~1,661~~	~~1,858~~	~~2,327~~	~~3,073~~
~~Vehicle maintenance and repairs~~	~~216~~	~~246~~	~~266~~	~~323~~	~~364~~	~~561~~	~~605~~	~~718~~	~~1,105~~
~~Vehicle insurance~~	~~289~~	~~119~~	~~384~~	~~502~~	~~824~~	~~681~~	~~1,112~~	~~1,255~~	~~1,854~~
~~Vehicle rental, lease, license and other charges~~	~~196~~	~~89~~	~~144~~	~~216~~	~~286~~	~~336~~	~~456~~	~~578~~	~~1,239~~
~~Public transportation~~	~~270~~	~~239~~	~~198~~	~~373~~	~~331~~	~~378~~	~~444~~	~~523~~	~~1,311~~]

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

	New York	Philadelphia	Boston
Owned dwellings	9,760	8,790	8,804
Rented dwellings	4,387	2,721	3,155
Other lodging	1,325	1,126	1,092
Utilities, fuels, and public services	4,146	4,356	4,067
Household operations	1,365	1,131	1,215
Housekeeping and miscellaneous supplies	610	701	527
Household furnishings and equipment	1,848	2,044	1,817
Vehicle purchases (net outlay)	2,102	2,455	2,572
Gasoline and motor oil	2,051	2,447	2,224
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,928	2,977	2,615
Public transportation	1,168	779	657

	[~~New York~~	~~Philadelphia~~	~~Boston~~
~~Owned dwellings~~	~~9,327~~	~~7,410~~	~~8,822~~
~~Rented dwellings~~	~~4,438~~	~~2,613~~	~~3,175~~
~~Other lodging~~	~~1,084~~	~~732~~	~~1,071~~
~~Utilities, fuels, and public services~~	~~3,879~~	~~3,981~~	~~3,850~~
~~Household operations~~	~~1,171~~	~~1,054~~	~~1.036~~
~~Housekeeping and miscellaneous supplies~~	~~572~~	~~602~~	~~542~~
~~Household furnishings and equipment~~	~~1,824~~	~~2,020~~	~~1,678~~
~~Vehicle purchases (net outlay)~~	~~2,349~~	~~2,244~~	~~3,420~~
~~Gasoline and motor oil~~	~~1,892~~	~~2,106~~	~~2,026~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges)~~	~~2,721~~	~~2,447~~	~~2,642~~
~~Public transportation~~	~~1,085~~	~~548~~	~~618~~]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70, 000 and over
Annual Expenditures									
Owned dwelling	1,260	994	1,465	1,916	2,901	3,852	4,954	6,829	11,817
Rented dwellings	2,679	2,862	2,914	2,950	2,547	2,560	2,448	1,634	864
Other lodging	227	165	139	196	221	218	369	478	1,549
Utilities, fuels and public services	1,312	1,497	2,231	2,481	2,872	3,131	3,330	3,778	4,636
Household operations	148	173	310	357	483	444	556	813	1,680
Housekeeping and miscellaneous supplies	229	217	318	346	476	580	506	582	1,051
Household furnishings and equipment	415	643	584	656	806	987	1,180	2,024	2,874
Vehicle purchases (net outlay)	628	896	747	1,515	1,824	2,762	1,679	2,969	5,806
Gasoline and motor oil	938	956	1,101	1,365	1,709	2,068	2,439	2,960	3,824
Vehicle maintenance and repairs	260	207	256	398	495	532	571	749	1,116
Vehicle insurance	373	282	413	454	779	645	881	988	1,466
Vehicle lease, license, and other charges	120	194	172	165	270	307	406	581	949
Public transportation	146	114	203	266	162	222	214	388	860

[Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70, 000 and over
Annual Expenditures									
Owned dwelling	1,011	1,042	1,426	2,117	2,990	3,824	4,552	6,617	11,685
Rented dwellings	2,400	2,463	2,753	2,477	2,634	2,452	2,249	1,495	860
Other lodging	249	142	125	186	148	206	349	460	1,492
Utilities, fuels and public services	1,196	1,524	2,189	2,519	2,806	2,958	3,204	3,692	4,483
Household operations	131	182	226	361	401	419	563	759	1,918
Housekeeping and miscellaneous supplies	200	235	274	323	419	482	557	583	999
Household furnishings and equipment	376	666	546	602	767	874	1,511	2,159	3,081
Vehicle purchases (net outlay)	670	389	1,073	1,321	1,723	2,167	1,609	3,309	5,888
Gasoline and motor oil	874	893	977	1,219	1,585	1,827	2,207	2,682	3,464
Vehicle maintenance and repairs	209	223	218	336	455	533	622	757	1,047
Vehicle insurance	371	266	186	368	815	959	876	948	1,411
Vehicle lease, license, and other charges	99	230	189	193	274	290	464	588	969
Public transportation	120	104	134	258	143	196	201	360	935]

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

	Chicago	Detroit	Minneapolis St. Paul	Cleveland
Owned dwelling	9,377	6,591	8,574	6,433
Rented dwelling	2,639	2,155	2,455	2,337
Other lodging	1,019	726	689	991
Utilities, fuels, and public services	4,062	3,654	3,482	3,839
Household operations	1,100	665	1,553	881
Housekeeping and miscellaneous supplies	621	632	670	651
Household furnishings and equipment	2,013	1,444	2,420	1,081
Vehicle purchases (net outlay)	3,075	2,242	3,950	2,995
Gasoline and motor oil	2,547	2,946	2,432	2,384
Other vehicle expenses (repairs, insurance, lease, license, and other charges	2,559	3,606	2,702	2,622
Public transportation	767	406	594	365

	[Chicago	Detroit	Minneapolis St. Paul	Cleveland
Owned dwelling	9,043	7.077	8,592	6,269

~~Rented dwelling~~	~~2,680~~	~~1,841~~	~~2,222~~	~~2,773~~
~~Other lodging~~	~~889~~	~~650~~	~~745~~	~~678~~
~~Utilities, fuels, and public services~~	~~3,761~~	~~3,637~~	~~3,294~~	~~3,768~~
~~Household operations~~	~~1,063~~	~~602~~	~~2,871~~	~~775~~
~~Housekeeping and miscellaneous supplies~~	~~654~~	~~642~~	~~562~~	~~561~~
~~Household furnishings and equipment~~	~~2,146~~	~~1,545~~	~~2,533~~	~~1,778~~
~~Vehicle purchases (net outlay)~~	~~3,084~~	~~2,201~~	~~3,689~~	~~3,296~~
~~Gasoline and motor oil~~	~~2,322~~	~~2,602~~	~~2,151~~	~~2,177~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges~~	~~2,635~~	~~3,506~~	~~2,204~~	~~2,644~~
~~Public transportation~~	~~806~~	~~433~~	~~649~~	~~253~~]

4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Owned dwelling	2,228	1,166	1,448	2,473	2,779	3,189	4,246	5,774	11,518
Rented dwelling	2,580	2,319	2,691	2,449	2,669	2,865	2,651	2,252	1,220
Other lodging	163	49	85	117	164	196	274	415	1,180
Utilities, fuels, and other charges	2,281	2,242	2,574	2,738	2,997	3,267	3,484	3,872	4,774
Household operations	264	172	353	488	427	517	603	937	1,874
Housekeeping and miscellaneous supplies	271	277	388	369	419	454	526	607	1,022
Household furnishings and equipment	766	804	557	763	778	848	1,176	1,751	2,991
Vehicle purchases (net outlay)	737	532	959	1,626	1,534	2,091	2,587	3,398	5,401
Gasoline and motor oil	1,261	1,144	1,307	1,621	2,108	2,421	2,669	3,144	4,007
Vehicle maintenance and repairs	223	216	264	390	457	510	584	714	1,134
Vehicle insurance	602	445	693	658	887	878	1,135	1,330	1,543
Vehicle lease, license, and other charges	92	100	80	143	147	169	227	299	601
Public transportation	137	60	113	95	156	168	143	300	810

~~[Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Owned dwelling~~	~~1,976~~	~~1,186~~	~~1,538~~	~~2,231~~	~~2,720~~	~~3,215~~	~~4,226~~	~~5,607~~	~~11,464~~
~~Rented dwelling~~	~~2,144~~	~~2,341~~	~~2,449~~	~~2,339~~	~~2,601~~	~~2,871~~	~~2,686~~	~~2,149~~	~~1,110~~
~~Other lodging~~	~~105~~	~~44~~	~~67~~	~~101~~	~~111~~	~~173~~	~~225~~	~~340~~	~~1,043~~
~~Utilities, fuels, and other charges~~	~~2,364~~	~~2,228~~	~~2,512~~	~~2,671~~	~~2,923~~	~~3,233~~	~~3,435~~	~~3,846~~	~~4,760~~
~~Household operations~~	~~298~~	~~171~~	~~371~~	~~438~~	~~431~~	~~542~~	~~629~~	~~881~~	~~1,848~~
~~Housekeeping and miscellaneous supplies~~	~~619~~	~~709~~	~~676~~	~~751~~	~~801~~	~~955~~	~~1,105~~	~~1,832~~	~~2,952~~
~~Household furnishings and equipment~~	~~619~~	~~709~~	~~676~~	~~751~~	~~801~~	~~955~~	~~1,105~~	~~1,832~~	~~2,952~~
~~Vehicle purchases (net outlay)~~	~~1,384~~	~~571~~	~~1,272~~	~~1,601~~	~~1,900~~	~~2,892~~	~~2,484~~	~~3,835~~	~~6,337~~
~~Gasoline and motor oil~~	~~1,042~~	~~943~~	~~1,188~~	~~1,521~~	~~1,849~~	~~2,186~~	~~2,432~~	~~2,933~~	~~3,583~~
~~Vehicle maintenance and repairs~~	~~307~~	~~186~~	~~301~~	~~347~~	~~426~~	~~561~~	~~616~~	~~727~~	~~1,133~~
~~Vehicle insurance~~	~~374~~	~~433~~	~~705~~	~~492~~	~~743~~	~~902~~	~~1,133~~	~~1,175~~	~~1,520~~
~~Vehicle lease, license, and other charges~~	~~93~~	~~76~~	~~79~~	~~105~~	~~154~~	~~170~~	~~232~~	~~326~~	~~657~~
~~Public transportation~~	~~100~~	~~81~~	~~95~~	~~103~~	~~140~~	~~200~~	~~149~~	~~320~~	~~789~~]

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

	Washington, D.C.	Baltimore	Atlanta	Miami	Dallas Forth Worth	Houston
Owned dwelling	12,435	9,443	7,421	7,507	6,339	6,906
Rented dwelling	3,691	2,912	2,923	4,118	3,142	2,834
Other lodging	1,041	548	582	470	396	619
Utilities, fuels, and public services	4,001	4,170	3,811	3,576	4,307	4,332
Household operations	1,774	881	820	1,180	1,093	1,018
Housekeeping and miscellaneous supplies	752	822	447	587	695	677
Household furnishings and equipment	2,433	1,478	1,271	1,022	1,767	1,674
Vehicle purchases (net outlay)	3,492	2,396	2,101	3,049	4,196	4,070
Gasoline and motor oil	2,666	2,665	2,821	2,863	2,733	3,274
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	3,190	2,191	1,893	2,076	2,861	3,064
Public transportation	1,103	542	501	518	350	472

	[~~Washington, D.C.~~	~~Baltimore~~	~~Atlanta~~	~~Miami~~	~~Dallas Forth Worth~~	~~Houston~~
~~Owned dwelling~~	~~12,380~~	~~8,921~~	~~7.353~~	~~8,100~~	~~6,446~~	~~6,872~~
~~Rented dwelling~~	~~3,947~~	~~2,504~~	~~2,831~~	~~3,809~~	~~2,892~~	~~2,533~~
~~Other lodging~~	~~713~~	~~505~~	~~676~~	~~281~~	~~505~~	~~560~~
~~Utilities, fuels, and public services~~	~~4,037~~	~~3,951~~	~~3,874~~	~~3,611~~	~~4,551~~	~~4,297~~
~~Household operations~~	~~1,592~~	~~960~~	~~1,035~~	~~1,197~~	~~1,192~~	~~1,080~~
~~Housekeeping and miscellaneous supplies~~	~~703~~	~~650~~	~~515~~	~~569~~	~~728~~	~~746~~
~~Household furnishings and equipment~~	~~2,153~~	~~1,632~~	~~1,433~~	~~1,140~~	~~1,856~~	~~1,664~~
~~Vehicle purchases (net outlay)~~	~~3,319~~	~~3,562~~	~~2,957~~	~~2,859~~	~~4,866~~	~~4,544~~
~~Gasoline and motor oil~~	~~2,272~~	~~2,508~~	~~2,407~~	~~2,457~~	~~2,559~~	~~2,936~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges)~~	~~3,163~~	~~2,049~~	~~2,1~~	~~2,092~~	~~2,902~~	~~3,149~~
~~Public transportation~~	~~778~~	~~554~~	~~570~~	~~530~~	~~439~~	~~490~~]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Owned dwelling	3,481	1,631	1,982	2,039	3,404	4,048	5,225	8,082	14,856
Rented dwelling	3,831	4,309	3,641	5,019	4,744	4,838	4,344	3,967	2,833
Other lodging	238	173	139	177	241	332	366	523	1,608
Utilities, fuels, and public services	1,838	1,692	1,927	2,080	2,445	2,828	3,066	3,475	4,436
Household operations	334	447	417	550	481	568	592	1,003	2,140
Housekeeping and miscellaneous supplies	419	266	506	288	434	551	587	689	1,065
Household furnishings and equipment	744	690	715	733	1,175	1,093	1,609	1,531	3,247
Vehicle purchases (net outlay)	506	1,189	978	1,481	2,101	2,312	2,306	4,345	4,754
Gasoline and motor oil	1,298	1,040	1,044	1,357	1,699	2,066	2,474	2,800	3,557
Vehicle maintenance and repairs	297	253	317	390	554	696	706	901	1,325
Vehicle insurance	1,420	291	452	529	584	1,020	1,423	1,069	1,515
Vehicle lease, license, and other charges	231	136	171	141	252	321	424	445	979
Public transportation	258	650	214	299	244	428	536	497	1,306

[~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Annual Expenditures~~									
~~Owned dwelling~~	~~2,776~~	~~1,312~~	~~1,960~~	~~2,280~~	~~3,430~~	~~4,288~~	~~5,209~~	~~7.835~~	~~15,293~~
~~Rented dwelling~~	~~3,755~~	~~4,108~~	~~3,833~~	~~4,535~~	~~4,587~~	~~4,714~~	~~4,056~~	~~4,512~~	~~2,605~~
~~Other lodging~~	~~296~~	~~95~~	~~85~~	~~166~~	~~166~~	~~311~~	~~412~~	~~594~~	~~1,689~~

~~Utilities, fuels, and public services~~	~~1,845~~	~~1,448~~	~~1,762~~	~~1,944~~	~~2,314~~	~~2,596~~	~~2,988~~	~~3,380~~	~~4,301~~
~~Household operations~~	~~356~~	~~450~~	~~461~~	~~429~~	~~444~~	~~563~~	~~826~~	~~957~~	~~2,106~~
~~Housekeeping and miscellaneous supplies~~	~~382~~	~~260~~	~~361~~	~~321~~	~~445~~	~~585~~	~~588~~	~~723~~	~~1,137~~
~~Household furnishings and equipment~~	~~525~~	~~602~~	~~640~~	~~851~~	~~1,574~~	~~1,280~~	~~1,584~~	~~1,741~~	~~3,754~~
~~Vehicle purchases (net outlay)~~	~~827~~	~~1,227~~	~~1,637~~	~~1,442~~	~~2,306~~	~~2,857~~	~~2,993~~	~~4,482~~	~~6,276~~
~~Gasoline and motor oil~~	~~1,168~~	~~823~~	~~961~~	~~1,300~~	~~1,612~~	~~1,892~~	~~2,264~~	~~2,640~~	~~3,393~~
~~Vehicle maintenance and repairs~~	~~348~~	~~209~~	~~349~~	~~442~~	~~505~~	~~616~~	~~785~~	~~922~~	~~1,313~~
~~Vehicle insurance~~	~~1,550~~	~~280~~	~~412~~	~~538~~	~~763~~	~~1,173~~	~~1,607~~	~~951~~	~~1,794~~
~~Vehicle lease, license, and other charges~~	~~517~~	~~161~~	~~153~~	~~138~~	~~191~~	~~331~~	~~383~~	~~526~~	~~1,002~~
~~Public transportation~~	~~305~~	~~217~~	~~250~~	~~380~~	~~263~~	~~484~~	~~598~~	~~696~~	~~1,330~~]

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

	Los Angeles	San Francisco	San Diego	Seattle	Phoenix
Owned dwelling	9,077	11,238	8,903	8,883	7,806
Rented dwelling	5,857	6,208	6,432	3,950	3,201
Other lodging	587	1,355	426	1,057	705
Utilities, fuels, and public services	3,364	3,204	2,861	3,485	3,874
Household operations	1,343	1,567	1,581	1,103	1,362
Housekeeping and miscellaneous supplies	623	600	573	641	655
Household furnishings and equipment	1,794	1,939	1,787	2,396	1,889
Vehicle purchases (net outlay)	2,883	2,973	1,429	3,113	5,074
Gasoline and motor oil	2,913	2,589	2,593	2,608	2,957
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,826	3,550	2,020	2,816	2,998
Public transportation	604	1,479	514	1,107	602

	[~~Los Angeles~~	~~San Francisco~~	~~San Diego~~	~~Seattle~~	~~Phoenix~~
~~Owned dwelling~~	~~9,260~~	~~12,526~~	~~9,278~~	~~9,213~~	~~6,736~~
~~Rented dwelling~~	~~5,394~~	~~5,539~~	~~6,276~~	~~3,261~~	~~3,135~~
~~Other lodging~~	~~616~~	~~1,454~~	~~620~~	~~1,056~~	~~744~~
~~Utilities, fuels, and public services~~	~~3,125~~	~~3,199~~	~~2,837~~	~~3,322~~	~~3,628~~
~~Household operations~~	~~1,321~~	~~1,808~~	~~1,637~~	~~860~~	~~1,075~~
~~Housekeeping and miscellaneous supplies~~	~~628~~	~~609~~	~~427~~	~~510~~	~~808~~
~~Household furnishings and equipment~~	~~1,990~~	~~2,176~~	~~1,596~~	~~2,449~~	~~2,464~~
~~Vehicle purchases (net outlay)~~	~~3,338~~	~~3,564~~	~~2,090~~	~~3,917~~	~~6,383~~
~~Gasoline and motor oil~~	~~2,712~~	~~2,489~~	~~2,504~~	~~2,288~~	~~2,594~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges)~~	~~3,364~~	~~3,502~~	~~1,962~~	~~2,747~~	~~2,846~~
~~Public transportation~~	~~727~~	~~1,238~~	~~702~~	~~1,094~~	~~601~~]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	2,488	2,269	2,573	2,562	2,990	3,654	4,204	4,609	6,282
Apparel	710	539	651	571	739	980	1,187	1,468	1,891
Health insurance	451	511	1,190	1,334	1,237	1,006	1,000	1,117	1,166
Medical services	146	169	234	346	370	472	419	737	748
Prescription drugs	164	208	244	429	372	312	280	343	392
Medical supplies	38	30	44	58	69	70	83	91	138
Personal care products and services	234	209	243	313	357	406	450	540	688
Education	1,495	1,019	459	309	413	390	506	379	926
Life and other personal insurance	31	53	94	108	187	123	111	158	263

[~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Food~~	~~2,265~~	~~2,035~~	~~2,396~~	~~2,560~~	~~2,862~~	~~3,400~~	~~3,928~~	~~4,670~~	~~6,049~~
~~Apparel~~	~~691~~	~~554~~	~~514~~	~~588~~	~~704~~	~~1,014~~	~~1,134~~	~~1,690~~	~~2,599~~
~~Health insurance~~	~~388~~	~~460~~	~~1,145~~	~~1,265~~	~~1,143~~	~~927~~	~~1,020~~	~~1,091~~	~~1,114~~

~~Medical services~~	~~117~~	~~143~~	~~252~~	~~374~~	~~449~~	~~453~~	~~430~~	~~695~~	~~907~~
~~Prescription drugs~~	~~142~~	~~186~~	~~366~~	~~474~~	~~442~~	~~292~~	~~297~~	~~499~~	~~412~~
~~Medical supplies~~	~~30~~	~~28~~	~~43~~	~~69~~	~~69~~	~~65~~	~~103~~	~~106~~	~~131~~
~~Personal care products and services~~	~~191~~	~~173~~	~~242~~	~~319~~	~~342~~	~~388~~	~~460~~	~~514~~	~~711~~
~~Education~~	~~1,405~~	~~775~~	~~460~~	~~283~~	~~389~~	~~348~~	~~330~~	~~373~~	~~905~~
~~Life and other personal insurance~~	~~29~~	~~67~~	~~99~~	~~128~~	~~211~~	~~119~~	~~116~~	~~194~~	~~304~~]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Food	4,514	3,814	4,204	3,496	4,492	4,954	5,199	6,113	8,640
Apparel	1,010	877	1,045	911	910	1,222	1,107	1,743	2,849
Health insurance	1,361	1,088	1,237	1,791	2,144	2,353	2,142	2,043	2,273
Medical services	565	292	413	377	783	658	827	921	1,232
Prescription Drugs	525	342	343	645	692	765	758	675	707
Medical supplies	145	43	68	65	108	122	150	147	200
Personal care products and services	389	294	306	285	364	452	531	601	999
Education	291	293	416	350	297	267	512	636	1,562
Life and other personal insurance	185	78	114	159	215	257	243	327	655

~~[Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Annual Expenditures~~									
~~Food~~	~~3,794~~	~~3,959~~	~~3,959~~	~~3,937~~	~~4,422~~	~~4,738~~	~~5,118~~	~~5,936~~	~~8,635~~
~~Apparel~~	~~1,499~~	~~1,097~~	~~889~~	~~812~~	~~1,014~~	~~989~~	~~1,395~~	~~1,773~~	~~2,988~~
~~Health insurance~~	~~1,097~~	~~910~~	~~1,122~~	~~1,716~~	~~2,167~~	~~2,201~~	~~1,997~~	~~2,001~~	~~2,119~~
~~Medical services~~	~~612~~	~~264~~	~~474~~	~~469~~	~~738~~	~~676~~	~~735~~	~~791~~	~~1,151~~
~~Prescription Drugs~~	~~409~~	~~389~~	~~375~~	~~654~~	~~696~~	~~793~~	~~696~~	~~670~~	~~735~~
~~Medical supplies~~	~~117~~	~~13~~	~~64~~	~~92~~	~~134~~	~~135~~	~~164~~	~~146~~	~~203~~
~~Personal care products and services~~	~~259~~	~~282~~	~~285~~	~~295~~	~~354~~	~~438~~	~~482~~	~~613~~	~~996~~
~~Education~~	~~504~~	~~183~~	~~467~~	~~272~~	~~226~~	~~273~~	~~447~~	~~559~~	~~1,335~~
~~Life and other personal insurance~~	~~124~~	~~86~~	~~113~~	~~189~~	~~219~~	~~239~~	~~253~~	~~305~~	~~626~~]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	5,223	3,822	4,343	4,575	4,980	5,647	6,425	6,787	9,557
Apparel	1,914	1,170	1,249	1,257	1,517	1,609	2,025	1,897	3,214
Health insurance	797	519	594	635	839	1,210	1,575	1,760	2,075
Medical services	191	133	163	202	312	426	535	764	1,039
Prescription drugs	238	232	174	228	291	329	583	478	617
Medical supplies	103	505	40	69	43	65	71	120	183
Personal care products and services	368	269	307	316	401	450	635	551	991
Education	530	536	201	211	356	385	509	705	2,524
Life and other personal insurance	88	85	135	57	151	143	264	288	681

~~[Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Food~~	~~4,944~~	~~3,430~~	~~4,238~~	~~4,213~~	~~5,229~~	~~5,694~~	~~6,487~~	~~6,887~~	~~9,100~~
~~Apparel~~	~~2,123~~	~~910~~	~~1,196~~	~~1,083~~	~~1,743~~	~~1,752~~	~~1,955~~	~~2,001~~	~~3,090~~
~~Health insurance~~	~~647~~	~~488~~	~~478~~	~~722~~	~~892~~	~~1,296~~	~~1,541~~	~~1,594~~	~~1,981~~
~~Medical services~~	~~290~~	~~126~~	~~109~~	~~291~~	~~253~~	~~405~~	~~700~~	~~686~~	~~1,029~~
~~Prescription drugs~~	~~153~~	~~133~~	~~230~~	~~190~~	~~290~~	~~403~~	~~632~~	~~504~~	~~633~~
~~Medical supplies~~	~~133~~	~~296~~	~~46~~	~~28~~	~~54~~	~~67~~	~~82~~	~~112~~	~~224~~
~~Personal care products and services~~	~~238~~	~~223~~	~~241~~	~~318~~	~~387~~	~~470~~	~~594~~	~~570~~	~~973~~
~~Education~~	~~1,158~~	~~311~~	~~75~~	~~298~~	~~482~~	~~368~~	~~554~~	~~827~~	~~2,280~~
~~Life and other personal insurance~~	~~114~~	~~117~~	~~142~~	~~73~~	~~179~~	~~175~~	~~336~~	~~302~~	~~641~~]

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

Debtor's Available Resources	Less than $10,000	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	5,028	5,250	4,539	5,735	6,476	6,721	7,556	11,152
Apparel	2,128	1,625	1,275	2,086	2,220	1,508	1,828	3,463
Health insurance	712	425	476	698	1,058	1,424	1,631	2,168
Medical services	584	333	177	296	350	664	730	1,184
Prescription drugs	167	189	69	220	289	328	399	523
Medical supplies	28	56	25	73	64	95	99	158
Personal care products and services	361	264	283	377	534	399	617	1,066
Education	805	603	306	325	443	542	800	2,486
Life and other personal insurance	149	61	70	115	142	195	256	623

[~~Debtor's Available Resources~~	~~Less than $10,000~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Food~~	~~5,072~~	~~5,587~~	~~4,555~~	~~6,176~~	~~6,238~~	~~6,831~~	~~7,768~~	~~10,673~~
~~Apparel~~	~~2,055~~	~~1,510~~	~~1,316~~	~~1,940~~	~~2,128~~	~~1,885~~	~~2,151~~	~~3,679~~
~~Health insurance~~	~~538~~	~~441~~	~~578~~	~~676~~	~~882~~	~~1,356~~	~~1,643~~	~~2,047~~
~~Medical services~~	~~294~~	~~165~~	~~204~~	~~349~~	~~414~~	~~677~~	~~696~~	~~1,188~~
~~Prescription drugs~~	~~257~~	~~186~~	~~118~~	~~274~~	~~274~~	~~304~~	~~390~~	~~550~~
~~Medical supplies~~	~~15~~	~~40~~	~~14~~	~~48~~	~~51~~	~~83~~	~~99~~	~~148~~
~~Personal care products and services~~	~~257~~	~~276~~	~~300~~	~~348~~	~~447~~	~~418~~	~~697~~	~~1,027~~
~~Education~~	~~414~~	~~322~~	~~392~~	~~379~~	~~333~~	~~728~~	~~931~~	~~2,325~~
~~Life and other personal insurance~~	~~167~~	~~80~~	~~79~~	~~115~~	~~136~~	~~196~~	~~318~~	~~678~~]

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

Debtor's Available Resources	Less than $10,000	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	6,307	4,858	6,180	5,695	6,685	7,319	8,542	12,284
Apparel	2,129	2,467	1,434	1,783	1,773	1,810	2,295	3,792
Health insurance	608	308	313	586	826	1,174	1,411	2,099
Medical services	336	146	275	170	636	486	959	1,210
Prescription drugs	170	102	88	203	279	258	430	555
Medical supplies	35	14	31	66	104	59	123	166
Personal care products and services	329	359	378	342	419	473	614	1,078
Education	286	248	257	276	296	339	619	2,605
Life and other personal insurance	63	35	63	62	105	182	244	626

[~~Debtor's Available Resources~~	~~Less than $10,000~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Food~~	~~5,479~~	~~6,266~~	~~5,354~~	~~5,442~~	~~6,346~~	~~7,904~~	~~8,643~~	~~11,972~~
~~Apparel~~	~~3,377~~	~~1,316~~	~~1,381~~	~~1,476~~	~~1,847~~	~~2,221~~	~~2,459~~	~~3,664~~
~~Health insurance~~	~~187~~	~~453~~	~~347~~	~~571~~	~~786~~	~~1,046~~	~~1,383~~	~~1,935~~
~~Medical services~~	~~215~~	~~165~~	~~215~~	~~294~~	~~663~~	~~596~~	~~842~~	~~1,072~~
~~Prescription drugs~~	~~223~~	~~138~~	~~135~~	~~206~~	~~293~~	~~281~~	~~438~~	~~491~~
~~Medical supplies~~	~~33~~	~~27~~	~~18~~	~~56~~	~~128~~	~~56~~	~~112~~	~~155~~
~~Personal care products and services~~	~~332~~	~~301~~	~~360~~	~~360~~	~~521~~	~~540~~	~~637~~	~~1,001~~
~~Education~~	~~373~~	~~236~~	~~219~~	~~252~~	~~542~~	~~340~~	~~732~~	~~2,576~~
~~Life and other personal insurance~~	~~56~~	~~61~~	~~89~~	~~83~~	~~116~~	~~132~~	~~274~~	~~656~~]

Section 5. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than ten (10) percent of the debtor's disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

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

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

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authori-

ty for a lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

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

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

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

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

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

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

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

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

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

CHARLEY SIMPSON, Chair

APPROVED BY AGENCY: May 20, 2010

FILED WITH LRC: June 11, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 27, 2010, at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, August 2, 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher, Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-7293, phone (502) 696-7298, fax (502) 6960-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Diana L. Barber, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures to be followed by the Authority in garnishing a defaulted student loan borrower's wages for payment of the borrower's student loan debt, as well as the procedures for a borrower to request a hearing on a garnishment and procedures for conducting that hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of the Higher Education Act of 1965, as amended, and its accompanying regulations regarding the collection of defaulted student loan debts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Authority to collect defaulted student loan debts through administrative wage garnishment and to conduct administrative hearings relating to the wage garnishment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth the procedures to be followed during the administrative wage garnishment process as well as the hearing process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will reflect the current poverty level and consumer expenditure figures published by the federal government.

(b) The necessity of the amendment to this administrative regulation: Current poverty level and consumer expenditure figures are necessary to assure a current and accurate standard for determining the validity of a claim of extreme financial hardship.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the requirements of federal and state law that authorize the Authority to promulgate regulations establishing the procedures for the conducting of hearings regarding administrative wage garnishment by the Authority.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by establishing an objective standard for extreme financial hardship that will be based on current economic data as established by the federal government.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student loan borrowers that have defaulted on their repayment obligations, whose wages are otherwise eligible for administrative wage garnishment and who are claiming that such garnishment will cause them extreme financial hardship. During calendar year 2009, approximately 2,070 notices of wage garnishment were sent and received by student loan borrowers. During the same period, 27 of those student loan borrowers requested a hearing regarding the wage garnishment. Of the 27 hearing requests, 26 were requested on the basis of extreme financial hardship.

(4) Provide an analysis of how the entities identified in (3) above 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 in order to comply with this administrative regulation or amendment: Each defaulted student loan borrower who objects to the garnishment of his/her wages on the basis of extreme financial hardship will be required to complete a request for hearing form as well as an affidavit of finances in order to establish his/her claim.

(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 entities noted above as all costs associated with the hearing request process are borne by the Authority.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those borrowers who complete the hearing request form and affidavit of finances will receive a hearing on the issue of whether garnishment of their wages would constitute an extreme financial hardship.

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

(a) Initially: There are no costs to student loan borrowers associated with the implementation of the amendment to this administrative regulation. Forms for requesting a hearing and for providing financial information to the Authority are provided to the borrowers at no cost to the borrower. The Authority bears any costs associated with the request for hearing process.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: The Authority maintains a federally restricted trust fund pursuant to 20 U.S.C. Section 1072b for operation of the insured student loan program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees is necessary for the implementation of the amendment to this administrative regulation. The amendment to this administrative regulation merely adopts the most recent economic standards, as determined by the federal government, for evaluating a student loan borrower's assertion that administrative wage garnishment will create an extreme financial hardship.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE AND 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 division of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.744(1), KRS 164.748(2), (4), (10), and (20), 164.753(2), 20 U.S.C. 1071 through 1087(2), 1095a, 34 C.F.R. 682.410(b)(9) and (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. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 20 U.S.C. 1095a, 34 C.F.R. 682.410(b)(10)

2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B, of the federal act and establishes the procedures for requesting and conducting a hearing related to the garnishment of the disposable pay. At least thirty (30) days before the initiation of garnishment proceedings, the Authority shall mail to the borrower's last known address a written notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice five (5) days after it was mailed by the Authority. The Authority shall offer the borrower an opportunity to inspect and copy Authority records related to the debt and an opportunity to enter into a written repayment agreement with the Authority under terms agreeable to the Authority. The Authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The Authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the Authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The Authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within sixty (60) days after the Authority's receipt of the borrower's hearing request. The hearing official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the Authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings, and an explanation of the borrower's rights, the Authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the Authority after the 15th day following the borrower's receipt of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision of the Authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must how, if his income is above 125% of the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the Authority Board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence. The Authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months. Unless the Authority receives information that the Authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the

employer within twenty (20) days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty (20) days after a final decision is made by the Authority to proceed with garnishment. The employer shall deduct and pay to the Authority from a borrower's wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the Authority with written consent to deduct a greater amount.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute and regulation require the Authority, as the designated state guarantee Authority, to ensure by adoption of standards, policies and procedures that a borrower has an opportunity for a hearing to dispute the existence, amount or repayment of the debt and that the regulations and procedures for such a hearing meet the requirements of the applicable federal statute (20 U.S.C.S. 1095a) and the applicable federal regulation (34 C.F.R. 682.410(b)(10)). Specifically, the statute and regulation require that in order to issue an administrative order of wage garnishment under the authority of the federal statute: At least thirty (30) days before the initiation of garnishment proceedings, the Authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice five (5) days after it was mailed by the Authority. The Authority shall offer the borrower an opportunity to inspect and copy Authority records related to the debt and an opportunity to enter into a written repayment agreement with the Authority under terms agreeable to the Authority. The Authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The Authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the Authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The Authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the Authority may prescribe, to be rendered within sixty (60) days after the Authority's receipt of the borrower's hearing request. The hearing official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the Authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings, and an explanation of the borrower's rights, the Authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the Authority after the 15th day following the borrower's receipt of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the Authority may prescribe, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order. The Authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months. Unless the Authority receives information that the Authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within twenty (20) days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty (20) days after a final decision is made by the Authority to proceed with garnishment. The employer shall deduct and pay to the Authority from a borrower's wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the Authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The administrative regulation does not impose stricter requirements than the federal mandate. The federal statute and regulation do not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the Authority, the hearing must be conducted and a decision rendered within sixty (60) days after the receipt of the request for a hearing, and that the hearing officer's decision is final (in contrast to KRS Chapter 13B that specifies that the hearing officer renders a "recommended" order subject to finalization by the board). The administrative regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted "in accordance with the procedures that the agency may prescribe. The Authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The administrative regulation sets out the procedures for requesting a hearing, the appointment of an impartial hearing officer, the time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision of the Authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the Authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this administrative regulation that are stricter than the federal mandate.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

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

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.7889(3)

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative

regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be $5,273[~~$4,617~~] or less.

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

(a) $950; or

(b) The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.

(2) The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program shall be:

(a) The amount specified in subsection (1)(a) of this section:

1. Divided by twelve (12); and

2. Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and

(b) Not in excess of the maximum specified in subsection (1)(b) of this section.

(3) For any academic year, a student shall not receive more than $1,900 for an aggregate CAP grant award.

Section 3. (1) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(2) A KHEAA grant award shall not be made for a summer academic term.

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

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

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

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

Section 5. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

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

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

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

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

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

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

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

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

CHARLEY SIMPSON, Chair

APPROVED BY AGENCY: May 20, 2010

FILED WITH LRC: June 11, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 27, 2010, at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, August 2, 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-7293, phone (502) 696-7298, fax (502) 6960-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation prescribes the award determination procedures for the CAP Grant Program. The amendment conforms to the content of the authorizing statutes by increasing the ceiling amount of expected family contribution and by setting the maximum amount that a student may receive in CAP grant funds for a given academic year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students applying for a CAP grant meet the required financial need criteria and those students receive the maximum CAP grant allowed for any academic period.

The amendment to this administrative regulation merely increases the maximum expected family contribution level necessary to demonstrate financial need, making grants available to more students and establishes the aggregate CAP grant award amount in any given academic year.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation merely increases the maximum expected family contribution level necessary to demonstrate financial need for eligibility for the CAP grant program.

(b) The necessity of the amendment to this administrative regulation: The amendment conforms to the content of the authorizing statutes by establishing the ceiling amount of expected family contribution for participation in the CAP grant program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing the ceiling amount of expected family contribution under the CAP grant program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment merely established the maximum expected family contribution level for eligibility for participation in the CAP grant program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Students at a total of sixty-two (62) Kentucky postsecondary institutions are eligible to receive CAP grant funds. In the academic year ending June 30, 2009, there were 230,900 applicants for grant awards. A total of forty thousand three hundred eighty-seven (40,387) students received KHEAA grant awards during that period.

(4) Provide an analysis of how the entities identified in (3) above 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 in order to comply with this administrative regulation or amendment: No actions will be required from either the student recipients or participating postsecondary institutions, as this amendment merely changes the expected family contribution for eligibility for the CAP grant program.

(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 either the student recipients or participating postsecondary institutions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No specific compliance is required under this regulation by either the student recipients or participating postsecondary institutions.

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

(a) Initially: The amendment to this administrative regulation establishes the maximum expected family contribution level necessary to demonstrate financial need, making grants potentially less available to students. However, the amount of the grant, the funds available for grants, and, in general, the overall cost of administering the program will neither increase nor decrease.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs while administrative costs are borne by the authority through receipts of the authority.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 164.748(4), 164.753(4), 164.7889(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. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 6:010. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4)

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) requires the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification. This administrative regulation establishes the written examination prerequisites for teacher certification.

Section 1. A teacher applicant for certification shall successfully complete the appropriate written tests identified in this administrative regulation prior to Kentucky teacher certification.

Section 2. The Education Professional Standards Board shall

require the test or tests and passing scores identified in this section for each new teacher applicant and each teacher seeking an additional certificate.

(1) [~~Beginning September 1, 2009,~~] An applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take "Interdisciplinary Early Childhood Education (0023)[~~.~~]" with a passing score of 166.

(2) An applicant for Elementary certification (grades P-5) shall take "Elementary Education: Content Knowledge (0014)" with a passing score of 148.

(3) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take the content test or tests based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:

(a) Middle School English and Communications: "Middle School English Language Arts (0049)" - 158;

(b) Middle School Mathematics: "Middle School Mathematics (0069)" - 148;

(c) Middle School Science: "Middle School Science (0439)" - 144; or

(d) Middle School Social Studies: "Middle School Social Studies (0089)" – 149.

(4) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take the content test or tests corresponding to the applicant's content area or areas with the passing scores identified in this subsection:

(a) Biology: "Biology: Content Knowledge (0235)" - 146;

(b) Chemistry: "Chemistry: Content Knowledge (0245)" - 147;

(c) Earth Science: "Earth and Space Sciences: Content Knowledge (0571)" – 147;

(d) English:

1."English Language, Literature and Composition: Content Knowledge (0041)" - 160; and

2. "English Language, Literature and Composition Essays (0042)" - 155;

(e) Mathematics:

1. "Mathematics: Content Knowledge (0061)" - 125; and

2. "Mathematics: Proofs, Models and Problems, Part 1 (0063)" - 141;

(f) Physics: "Physics: Content Knowledge (0265)" - 133; or

(g) Social Studies:

1. "Social Studies: Content Knowledge (0081)" - 151; and

2. "Social Studies: Interpretation of Materials (0083)" – 159.

(5) An applicant for certification in all grades shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in this subsection:

(a) Art:

1. "Art: Content Knowledge (0133)" - 158; and

2. "Art Making (0131)" - 154;

(b) French: "French: Content Knowledge (0174)"[~~(0173)" - 159~~];

(c) German: "German: Content Knowledge (0183)"[~~(0181)" - 157~~];

(d) Health: "Health Education (0550)" - 630;

(e) Health and Physical Education:

1. "Health and Physical Education: Content Knowledge (0856)"; and

2. "Physical Education: Movement Forms - Analysis and Design (0092)" - 151;

(f) Integrated Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(g)[~~(f)~~] Instrumental Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(h)[~~(g)~~] Vocal Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(i)[~~(h)~~] Latin: "Latin (0600)" - 700;

(j)[~~(i)~~] Physical Education:

1. "Physical Education: Content Knowledge (0091)" - 147; and

2. "Physical Education: Movement Forms-Analysis and Design (0092)" - 151;

(k)[~~(j)~~] School Media Librarian: "Library Media Specialist (0311)[~~(0310)~~]" - 156[~~640~~];

(l)[~~(k)~~] School Psychologist: "School Psychologist (0401)" – 161; or

(m)[~~(l)~~] Spanish: "Spanish: Content Knowledge (0195)[~~(0191)~~]" [~~– 160~~].

(6) An applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) Communication Disorders:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

2. "Speech-Language Pathology (0330)" - 600;

(b) Hearing Impaired:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

2. "Education of Deaf and Hard of Hearing Students (0271)" - 167;

(c) Hearing Impaired With Sign Proficiency:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157;

2. "Education of Deaf and Hard of Hearing Students (0271)" – 167; and

3. One (1) of the following tests with a passing score of Intermediate Level:

a. "Sign Communication Proficiency Interview (SCPI)"; or

b. "Educational Sign Skills Evaluation (ESSE)";

(d) Learning and Behavior Disorders:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

2. "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" - 172;

(e) Moderate and Severe Disabilities:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

2. "Education of Exceptional Students: Severe to Profound Disabilities (0544)" – 156; or

(f) Visually Impaired:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

2. "Teaching Students with Visual Impairments (0281)[~~(0280)~~]" - 161[~~700~~].

(7)(a) Except as provided in paragraph (b) of this subsection, an applicant for Career and Technical Education certification to teach in grades five (5) - twelve (12) shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in this paragraph:

1. Agriculture: "Agriculture (0700)" - 520;

2. Business and Marketing Education: "Business Education (0101)[~~(0100)~~]" [~~- 590~~];

3. Family and Consumer Science: "Family and Consumer Sciences (0121)" - 162; or

4. Engineering and Technology Education: "Technology Education (0050)" - 600.

(b) An applicant for Industrial Education shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in 16 KAR 6:020.

(8) An applicant for a restricted base certificate in the following area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) English as a Second Language: "English to Speakers of Other Languages (0361)[~~(0360)~~]" - 157[~~620~~];

(b) Speech/Media Communications: "Speech Communication (0221)[~~(0220)~~]" - 146[~~580~~]; or

(c) Theater: "Theatre (0640)" - 630.

(9) An applicant for an endorsement in the following content area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the passing scores identified in this subsection:

(a) English as a Second Language: "English to Speakers of Other Languages (0361)[(0360)]" - 157[620];

(b) Learning and Behavior Disorders, grades eight (8) - twelve (12): "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" – 172; or

(c) Gifted Education, grades primary[preschool] - twelve (12): "Gifted Education (0357)" – 152; and

(d) Reading Primary through Grade 12: "Teaching Reading (0204)".

Section 3. In addition to the content area test or tests established in Section 2 of this administrative regulation, each new teacher shall take the pedagogy test and meet the passing score identified in this section that corresponds to the grade level of certification sought. If a certified teacher is seeking additional certification in any area, the applicant shall not be required to take an additional pedagogy test.

(1) An applicant for Elementary certification (grades preschool - five (5)) shall take "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)" - 161.

(2) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)" - 161.

(3) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

(4) An applicant for certification in all grades with a content area identified in Section 2(5) of this administrative regulation shall take either:

(a) "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)" - 161;

(b) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)" - 161; or

(c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

(5) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The content area test or tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.

(6) An applicant for Career and Technical Education certification in grades five (5) through twelve (12) shall take either:

(a) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)" - 161; or

(b) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the specific restricted base certificate:

(a) "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)" - 161;

(b) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)" - 161; or

(c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

Section 4. Assessment Recency. (1) A passing score on a test established at the time of administration shall be valid for the purpose of applying for certification for five (5) years from the test administration date.

(2) A teacher who fails to complete application for certification to the Education Professional Standards Board within the applicable recency period of the test and with the passing score established at the time of administration shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(3) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:

(a) The Educational Testing Service;

(b) The agency established by the Education Professional Standards Board as the authorized test administrator.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board and to the appropriate teacher preparation institution where the applicant received the relevant training.

(3)(a) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration.

(b) An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6. An applicant shall pay the appropriate examination fee established by the Educational Testing Service or other authorized test administrator for each relevant test required to be taken.

Section 7. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations.

Section 8. The Education Professional Standards Board shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service or other authorized test administrator to determine the impact of these tests.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: May 17, 2010

FILED WITH LRC: June 2, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2010 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the written examination prerequisites and the corresponding passing scores for teacher certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to teacher candidates of the assessment requirements for obtaining and maintaining a teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 places the responsibility of selecting the assessments and determining the

minimum acceptable level of achievement on each assessment on the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the required teacher certification assessments and their corresponding minimum acceptable scores.

(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: In September of 2009, the Educational Testing Service (ETS) changed the test code and score for the following tests: Library Media Specialist, Speech Communication, English to Speakers of Other Languages, and Teaching Students with Visual Impairments. This amendment updates the regulation so that it contains the correct test code and minimum passing score. This amendment also replaces four current tests, French: Content Knowledge, German: Content Knowledge, Spanish: Content Knowledge, and Business Education, with newly updated tests. A minimum passing score will not be set for these new tests until performance data is gathered for them. The amendment also adds a test for individuals seeking both Health and Physical Education certification so that these individuals will not have to take three content area tests. This amendment establishes the requirement of taking Teaching Reading assessment for those individuals seeking a Reading (primary through grade 12) endorsement. The amendment establishes 166 as the passing score for Interdisciplinary Early Childhood Education assessment. Finally, this amendment changes the title of "Technology Education" to "Engineering and Technology" to reflect a change made in 16 KAR 2:010.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the required assessments and corresponding scores are adequately set to produce the most competent educators.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statues, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the required assessments and corresponding passing scores for Kentucky teacher certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment more closely aligns assessment options with teacher preparation program requirements and opportunities within an actual school setting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and educators seeking new and additional teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to the Education Professional Standards Board website for current assessment requirements. Applicants will need to continue to refer to the Education Professional Standards board website for current assessment requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by a supply of teachers who are competent in their content area.

(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: State General Fund.

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, regional universities, and the Education Professional Standards Board.

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the testing requirements for teacher candidates to obtain certification.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 6:030. Examination prerequisites for principal certification.

RELATES TO: KRS 161.020, 161.027, 161.030

STATUTORY AUTHORITY: KRS 161.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for an applicant seeking certification as principal, and further requires that each applicant for certifica-

tion as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the Education Professional Standards Board. This administrative regulation establishes the examination requirements for certification as principal required under KRS 161.027.

Section 1. (1) The certificate for school principal shall be valid for serving in the position of principal or assistant principal. A new applicant for certification as a school principal, including vocational school principal, shall successfully complete the prerequisite tests specified in Section 2 of this administrative regulation prior to certification as a school principal. A score on a test completed more than five (5) years prior to application for certification shall not be acceptable.

(2) In addition to the examination requirement specified in Section 2 of this administrative regulation, an applicant for certification shall successfully complete a one (1) year internship program if the applicant has had less than two (2) years of successful experience as a principal in another state.

Section 2. An applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:

(1) School Leaders Licensure Assessment (1011) - 160[~~165~~]; and

(2) Kentucky Specialty Test of Instructional and Administrative Practices - eighty-five (85) percent correct responses.

Section 3. The requirement to successfully complete the School Leaders Licensure Assessment shall not be required for an applicant who has:

(1) Two (2) years of experience as a certified principal in another state; and

(2) Successfully completed a nationally administered test in the area of educational leadership and administration.

Section 4. (1) An applicant for certification as principal shall take the required School Leaders Licensure Assessment on a date established by the ETS. An applicant shall authorize that test results be forwarded to the Education Professional Standards Board by the ETS.

(2) An applicant for certification as principal shall take the Kentucky Specialty Test of Instructional and Administrative Practices on a date established by the Education Professional Standards Board. Scoring and reporting of scores shall be the responsibility of the Education Professional Standards Board or its designated agent.

(3) Public announcement of a testing date and location shall be issued sufficiently in advance to permit registration as required by the ETS and the Education Professional Standards Board.

(4) An applicant shall seek information regarding the dates and location of the test and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 5. (1) For the required School Leaders Licensure Assessment, the applicant shall pay all fees assessed by the ETS.

(2) For the Kentucky Specialty Test of Instructional and Administrative Practices, an applicant shall pay a fee of eighty (80) dollars.

Section 6. An applicant who fails to achieve a minimum score on a required test as specified in Section 2 of this administrative regulation shall be permitted to retake the test or tests during a regularly-scheduled test administration.

Section 7. A temporary certificate issued in accordance with KRS 161.027(6)(a) shall not be extended for an applicant who does not successfully complete the assessments within the year.

Section 8. (1) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.

(2) Upon successful completion of the assessments and the principal internship, a certificate shall be issued for an additional four (4) years.

(3) The temporary certificate issued in accordance with KRS 161.027(6)(b) shall not be extended beyond the one (1) year period.

Section 9. (1) To provide for confidentiality of information, the Education Professional Standards Board shall report individual scores on the Kentucky Specialty Test of Instructional and Administrative Practices to the individual applicant. The scores shall not be released to other individuals or agencies.

(2) A score shall not be used by the Education Professional Standards Board in an individually identifiable form other than for purposes of determining eligibility for certification as school principal.

Section 10. On an annual or biennial basis, the Education Professional Standards Board shall collect and analyze data provided by the Educational Testing Service through score and institution reports which permit evaluation of the examination prerequisites covered by this administrative regulation.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: May 17, 2010

FILED WITH LRC: June 2, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2010 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the written examination prerequisites and the corresponding passing scores for principal certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to principal preparation candidates of the assessment requirements for obtaining and maintaining a principal certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 places the responsibility of selecting the assessments and determining the minimum acceptable level of achievement on each assessment on the Education Professional Standards Board.

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

trative regulation lists the required principal certification assessments and their corresponding minimum acceptable scores.

(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 Education Testing Service (ETS) changed the School Leaders Licensure Assessment (SLLA) in 2009. This amendment establishes the minimum passing score for the new SLLA at 160.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the required assessments and corresponding scores are adequately set to produce the most competent educators.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statues, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the required assessments and corresponding passing scores for Kentucky principal certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment more closely aligns assessment options with teacher preparation program requirements and opportunities within an actual school setting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and educators seeking new and additional teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to this regulation or the Education Professional Standards Board website for current assessment requirements. Applicants will need to continue to refer to this regulation or the Education Professional Standards board website for current assessment requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by a supply of competent principals.

(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: State General Fund

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for a principal certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, regional universities, and the Education Professional Standards Board.

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the testing requirements for teacher candidates to obtain certification.

KENTUCKY STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:130. Facsimile transmission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens [~~Submitting Federal Post Card Application by facsimile~~].

RELATES TO: KRS 116.045, 116.0452, 117.079, 117.085, 117.086, 42 U.S.C. 1973ff, 42 U.S.C. 1793ff-1

STATUTORY AUTHORITY: KRS 116.045(4)(c), (e), 117.079 [~~117.015(1)(a)~~], 117.086(1), 42 U.S.C. 1973ff, 1973ff-1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. [~~117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.~~] 42 U.S.C. 1973ff-1 provides that each state shall use the official post card form for simultaneous voter registration application and absentee ballot application. The Military and Overseas Voter Empowerment Act of 2009, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one (1) means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, balloting, and election materials and information. KRS 116.045(4)(c) provides that any person may register to vote or may change his or her party affiliation by means of the Federal Post Card Application if the person is a resident of Kentucky and a member of the Armed Forces, a dependent of members of the Armed Forces, or an overseas citizen. KRS 116.045(e) authorizes the State Board of Elections to approve methods of registration for

any person to register to vote or change his or her party affiliation. KRS 117.085(1)(b) mandates that the county boards of elections accept the Federal Post Card Application by facsimile and that the application may be used to register to vote and to apply for an absentee ballot. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the blank absentee ballot by facsimile.

Section 1. Definitions. (1) "Application" means the Federal Post Card Application, Standard Form 76.

(2) "Instructions to voter" means the Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Emailed an Absentee Ballot, SBE 46A.

(3) "Transmission sheet" means the Official Election Materials - Electronic Transmission Sheet.

Section 2. Who May Request Federal Post Card Application by Facsimile. (1) Any resident of Kentucky may transmit a request for an application to the office of the county clerk of the county where the applicant resides via facsimile if the applicant meets one (1) of the following criteria:

(a) Is a member of the Armed Forces;

(b) Is a dependent of a member of the Armed Forces; or

(c) Is a citizen residing overseas.

(2) If the applicant desires to have the application faxed to him or her, the applicant shall indicate this and the appropriate facsimile number on his or her request.

Section 3. Requests for Applications. (1) Upon receiving a request for an application by facsimile from or on behalf of a person who meets the requirements listed in Section 2(1), a county clerk shall complete the transmission sheet and the county clerk's portion of the application. The county clerk shall then do one (1) of the following:

(a) Transmit the transmission sheet and the application to the Federal Voting Assistance Program at one (1) of the numbers listed on the transmission sheet; or

(b) Transmit the transmission sheet and the application to the voter at the facsimile number provided by the voter on the absentee ballot application.

(2) If the county clerk has faxed the materials through the Federal Voting Assistance Program's facsimile numbers, [~~the county clerk shall not transmit the application directly to the applicant.~~] the Federal Voting Assistance Program shall transmit the application to the applicant via facsimile.

(3) If the applicant does not clearly request that the application be sent via a facsimile machine, then the county clerk may transmit the application by the U.S. mail.

Section 4. Processing a Completed Application by Facsimile. (1) The county clerk shall accept any properly-completed Federal Post Card Application by facsimile for the purposes of voter registration and application for an absentee ballot from any person who fulfills the eligibility requirements listed in Section 2(1) of this administrative regulation.

(2) The county clerk shall accept a properly-completed application for voter registration at any time consistent with the timelines established by KRS 116.0452.

(3) If an application for an absentee ballot is received by facsimile less than seven (7) days before the applicable election, the county clerk shall not process the application. If a completed application for an absentee ballot is received by facsimile not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the application, in accordance with KRS 117.085(1)(b).

(4) The county clerk shall verify the applicant's eligibility. If the applicant is eligible to vote in the current election, then the county clerk shall prepare a faxable copy of the original blank absentee ballot.

(5) The county clerk shall mark the original blank absentee ballot "Faxed to {Military or Overseas} [~~Absentee~~] Voter" and the ballot shall be retained. The original blank absentee ballot shall not be reused.

(6) The county clerk shall complete a transmission sheet, the county clerk's portion of the voter verification sheet, [~~SBE 46B,~~] and the instructions to voter sheet. The faxable copy of the original blank absentee ballot shall be sent via facsimile, along with the voter verification sheet, the instructions to voter sheet, and the transmission sheet to one (1) of the Federal Voting Assistance Program facsimile numbers listed on the transmission sheet or directly to the facsimile number provided by the voter.

(7) If the county clerk has faxed the materials through the Federal Voting Assistance Program's facsimile numbers, [~~The county clerk shall not transmit the ballot and related materials directly to the voter.~~] the Federal Voting Assistance Program shall transmit the documents to the voter via facsimile.

(8) If the county clerk receives a faxed application that[~~which~~] does not clearly indicate whether the ballot is to be transmitted by mail or by facsimile, the county clerk shall transmit the blank absentee ballot by U.S. mail.

Section 5. Voter's Instructions on Completing an Absentee Ballot Received Via Facsimile. (1) When a voter receives an absentee ballot via facsimile, the voter shall mark the absentee ballot and seal it in an inner envelope. The voter shall then complete and sign the voter verification sheet.

(2) If the voter required assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall:

(a) Print his or her name, voting address, and precinct number on the back of the outer envelope as found on the voter verification sheet;

(b) Seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope;

(c) Place his or her signature across the back flap of the outer envelope;

(d) Print "Absentee Ballot" on the front of the outer envelope without obstructing[~~, but shall not obstruct~~] the address area; and

(e) Mail the envelope to the address for the county clerk located on the voter instruction sheet.

(4) The absentee ballot shall be received by the county clerk through U.S. mail by the time established by the general election laws for the closing of the polls in accordance with KRS 117.086(1) in order to be counted.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [~~SBE 46,~~] "Instructions for Faxing or Emailing an Absentee Ballot to a Qualified Kentucky Resident", SBE 46, June 2010 [~~(December 2005 edition)~~];

(b) "Official Elections Material - Electronic Transmission Sheet" [~~(2004 edition)~~];

(c) "Federal Post Card Application", Standard Form 76 (Rev. 10-2005);

(d) [~~SBE 46A,~~] "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Emailed an Absentee Ballot", SBE 46A, June 2010 [~~(December 2005 edition)~~]; and

(e) [~~SBE 46B,~~] "Voter Verification Sheet", SBE 46B, June 2010 [~~(December 2005 edition)~~].

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

This is to certify that this regulation is submitted with the concurrence of the Attorney General pursuant to KRS 117.079.

TREY GRAYSON, Chair
JACK CONWAY, Attorney General

APPROVED BY AGENCY: June 7, 2010

FILED WITH LRC: June 15, 2010 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA), 42 U.S.C. 1973ff, provides that each state shall use the official post card form for simultaneous voter registration application and absentee ballot application. The Military and Overseas Voter Empowerment Act of 2009 (MOVE), Public Law 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, balloting, and election materials and information. KRS 116.045(4)(c) provides that any person may register to vote or may change his or her party affiliation by means of the Federal Post Card Application if the person is a resident of Kentucky and a member of the Armed Forces, a dependent of members of the Armed Forces, or an overseas citizen. KRS 116.045(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.085(1)(b) mandates that the county boards of elections accept the Federal Post Card Application by facsimile and that the application may be used to register to vote and to apply for an absentee ballot. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the blank absentee ballot by facsimile.

(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the UOCAVA, MOVE, KRS 117.079, and KRS 117.085, to preserve the absentee voting rights of military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 authorize the Board to promulgate administrative regulations governing the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and provides multiple electronic methods for the named voters to complete the absentee voting process in accordance with UOCAVA and MOVE.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation provides for registering to vote and requesting an absentee ballot via facsimile expediting the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States. Such persons may have little notice of their location on election day or during the days of absentee voting and the regular delays in the mail service make it impractical to follow the normal methods for absentee voting.

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

(a) How the amendment will change the existing administrative regulation: This amendment provides for registering to vote and requesting an absentee ballot via facsimile either through FVAP or directly to the voter as required by MOVE. This amendment also updates the most recent versions of the necessary forms, SBE 46, SBE 46A, SBE 46B, and Official Election Materials - Electronic Transmission Sheet.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to ensure that there is an adequate number of provisional ballots for voters of each political party at each precinct where a primary is held.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is necessary to provide faxing of elections materials to expedite the absentee voting process to military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States as required by MOVE.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the most reliable and convenient methods in which military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States can vote by absentee ballot.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and all county clerks.

(4) 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 to an existing administrative regulation: The county clerks will have use their facsimile machines to remain in contact with the voter or forward the election related materials to the FVAP Electronic Transmission Service for forwarding to the voter. The voters will have easy and unfettered access to electronic voting materials. The county clerks and the voters who are members of the Armed Forces deployed overseas or overseas citizens will benefit from the expedited absentee voting process established by this administrative regulation.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The costs for maintaining a facsimile machine are already provided in local budgets and faxing the voting materials through the FVAP Electronic Transmission Service minimizes the cost as opposed to faxing directly to a voter overseas.

(b) On a continuing basis: The costs associated with maintaining faxing machine are minimal and included in existing budgets.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment applies equally to all citizens.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government: Yes

(2) State what unit, part, or division of local government this administrative regulation will affect: All county clerks' offices.

(3) State the aspect or service of local government to which this administrative regulation relates: the conduct of elections and absentee voting.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

(a) Revenues: This administrative regulation will not generate any revenues for the local governments.

(b) Expenditures: The costs for maintaining a facsimile machine are already provided in local budgets and faxing the voting materials through the FVAP Electronic Transmission Service minimizes the cost as opposed to faxing directly to a voter overseas.

(c) Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff and 1973ff-1, the Uniformed and Overseas Citizen Absentee Voting Act and the Military and Overseas Voter Empowerment Act.

(2) State compliance standards: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General.

(3) Minimum or uniform standards contained in the federal mandate: This administrative regulation implements procedures for Kentucky counties to follow to provide for the use of the Federal Post Card Application (FPCA) for registering to vote and requesting an absentee ballot for military and overseas voters, to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, blank balloting, and election materials and information.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements that those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: None

KENTUCKY STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:140. Submitting a Federal Post Card Application and absentee ballot request electronically.

RELATES TO: KRS 116.995, 117.079, 117.085, 117.995, 119.265, 369.107, and 42 U.S.C. 1973

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.079, 42 U.S.C. 1973ff-1

NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.~~] KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Military and Overseas Voter Empowerment Act of 2009, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, blank balloting, and election materials and information. 42 U.S.C. 1973ff-1(h) requires each state to develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot has been received by the county clerk. KRS 116.045(4)(c) provides that any person may register to vote or may change his or her party affiliation by means of the Federal Post Card Application if the person is a resident of Kentucky and a member of the Armed Forces, a dependent of members of the Armed Forces, or an overseas citizen. KRS 116.045(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.085(1)(b) mandates that the county boards of elections accept the Federal Post Card Application by facsimile and that the application may be used to register to vote and to apply for an absentee ballot. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the absentee ballot electronically. [~~The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. 1973ff, authorizes the Department of Defense to implement a voting assistance system for the purposes of expediting the absentee voting process for deployed members of the Armed Forces of the United States using existing technology. This administrative regulation implements a process for local elections officials to participate in the Department of Defense's system.~~]

Section 1. Definitions. (1) "Absentee ballot application" means the Federal Post Card Application, Standard Form 76[~~B~~], electronically sent to the county clerk [~~from FVAP~~].

(2) "FVAP" means the Federal Voting Assistance Program, an office within the Department of Defense responsible for administering UOCAVA and MOVE.

(3) "Instructions to voter sheet" means the "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Emailed [~~Electronically Sent~~] an Absentee Ballot," SBE 46A.

(4) "MOVE" means the Military and Overseas Citizen Empowerment Act, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1.

(5) "Registered voter" means a resident of Kentucky who is eligible to vote and is a:

(a) Military personnel serving on active duty outside the United States; or

(b) Other resident of Kentucky residing outside the United States.

(6) "Transmission sheet" means the Official Election Materials - Electronic Transmission Sheet.

(7) "UOCAVA" means the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff.[~~(5)~~]

(8)[~~(5)~~] "Voter verification sheet" means the SBE 46B, the form the registered voter signs and includes the voter assistance oath.

Section 2. (1) A county clerk [~~Any county clerk's office~~] that has online capabilities shall follow the process established by this administrative regulation in administering UOCAVA and MOVE [~~the Department of Defense's system through FVAP~~] for the electronic transmission of Federal Post Card Applications, [~~and~~] absentee ballot requests, and blank absentee ballots.

(2) The county clerk shall use the electronic mailing address provided or recognized by the Kentucky Department of Transportation to receive a voter's FPCA, to send a blank absentee ballot, and to send election related materials.

Section 3. Processing a Completed Application electronically. (1) If the county clerk receives notification of a voter's absentee ballot application [~~is received~~] electronically [~~from FVAP~~] less than seven (7) days before the applicable election, the county clerk shall not process the application.

(2) If the county clerk receives notification of a voter's completed absentee ballot application [~~is received~~] electronically [~~from FVAP~~] not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the absentee ballot application.

(3) The county clerk shall then verify the voter's eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare an electronic copy, in a manner prescribed by the State Board of Elections [~~FVAP~~], of the original blank absentee ballot. The original blank absentee ballot shall [~~is~~] then be marked "Emailed to {Military or Overseas} Voter[~~Electronically Sent to FVAP~~]" and retained.

(4) The original blank absentee ballot shall not be reused. The electronic copy of the original blank absentee ballot shall be sent electronically to the voter [~~FVAP~~], along with the transmission sheet, Instructions to voter sheet, and the voter verification sheet, to either the FVAP Electronic Transmission Service at the email address listed on the transmission sheet or directly to the voter at the email address provided on the voter's absentee ballot application.

Section 4. Voter's Instructions on Completing an [~~Electronic~~]

Absentee Ballot Received Electronically [~~From FVAP~~]. (1) When a voter receives an absentee ballot electronically from the county clerk [~~FVAP~~], the voter shall print the absentee ballot, mark the absentee ballot, and seal it in an inner envelope.

(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter requires assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall print his or her name, voting address, and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope without obstructing[~~, but shall not obstruct~~] the address area.

(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot shall be required to be received, by 6 p.m. local time on Election Day, to the county clerk through the mail in order to be counted.

Section 5. Military and Overseas Voter Free Access System. (1) The State Board of Elections shall develop a system by which the voter may determine the date the county clerk delivered the blank absentee ballot to the voter and the date the voter's voted ballot was received by the county clerk.

(2) The county clerk shall participate in the free access system developed by the State Board of Elections or create a similar system on the local level by which the requirements of 42 U.S.C. 1973ff-1(h) are fulfilled.

Section 6. If any person has knowledge of a failure to execute the duties established by this administrative regulation, the person shall contact the State Board of Elections or the Attorney General's Office to make a complaint of a violation in accordance with KRS 116.995, 117.995(2), or 119.265.

Section 7.[~~6.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Instructions for Faxing or Emailing an Absentee Ballot to a Qualified Kentucky Resident", SBE 46, June 2010;

(b) "Federal Post Card Application", Standard Form 76A (Rev. 10-2005);

(c) "Official Elections Material - Electronic Transmission Sheet"; (d)[~~(b) SBE 46A~~] "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Electronically Sent an Absentee Ballot", SBE 46A, June 2010 [~~(August 2008 edition)~~]; and

(e)[~~(c) SBE 46B~~] "Voter Verification Sheet", SBE 46B, June 2010 [~~(December 2005 edition)~~].

(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 p.m.

This is to certify that this regulation is submitted with the concurrence of the Attorney General pursuant to KRS 117.079.

TREY GRAYSON, Chair
JACK CONWAY, Attorney General

APPROVED BY AGENCY: June 7, 2010

FILED WITH LRC: June 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2010, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 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 the date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires the states to provide for the use of the Federal Post Card Application (FPCA) for registering to vote and requesting an absentee ballot for military and overseas voters. The Military and Overseas Voter Empowerment Act of 2009 (MOVE), Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, blank balloting, and election materials and information. 42 U.S.C. 1973ff-1(h) requires each state to develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot has been received by the county clerk. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the absentee ballot electronically and provides a free access system for voters to determine the status of their absentee ballots.

(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the UOCAVA, MOVE, KRS 117.079, and KRS 117.085, to preserve the absentee voting rights of military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 authorize the Board to promulgate administrative regulations governing the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and provides multiple electronic methods for the named voters to complete the absentee voting process and monitor that process in accordance with UOCAVA and MOVE.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation provides multiple methods for electronically registering to vote and requesting an absentee ballot and a free access system for the voter to use to monitor this process expediting the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States. Such persons may have little notice of their location on election day or during the days of absentee voting and the regular delays in the mail service make it impractical to follow the normal methods for absentee voting.

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

(a) How the amendment will change the existing administrative regulation: This amendment provides multiple methods for electronically registering to vote and requesting an absentee ballot as required by MOVE and provides for a free access system. This amendment also updates the most recent versions of the necessary forms, SBE 46, SBE 46A, SBE 46B, and Official Election Materials—Electronic Transmission Sheet.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide multiple electronic methods to expedite the absentee voting process to military personnel serving on active duty outside the United States and

other residents of Kentucky residing outside the United States and a free access system as required by MOVE.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing multiple electronic methods to expedited absentee voting process to military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and a free access system as required by MOVE.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the most reliable and convenient methods in which military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States can vote by absentee ballot.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and all county clerks.

(4) 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 to an existing administrative regulation: The county clerks will have use their email addresses to remain in contact with the voter or forward the election related materials to the FVAP Electronic Transmission Service for forwarding to the voter. The voters will have easy and unfettered access to electronic voting materials. The county clerks and the voters who are members of the Armed Forces deployed overseas or overseas citizens will benefit from the expedited absentee voting process established by this administrative regulation.

(5) Estimate how much it will cost to implement this administrative regulation:

(a) Initially: The costs for the email addresses are already provided in local budgets and/or the Department of Transportation's budget. The Free Access System is being funded by the State Board of Elections with the use of Title II Help America Vote Act funding.

(b) On a continuing basis: The costs associated with maintaining email addresses are minimal and included in existing budgets. The maintenance of the Free Access System will be provided by the use of Title II HAVA funding.

(6) The source of funding to be used for the implementation and enforcement of this administrative regulation: The costs for the email addresses are already provided in local budgets and/or the Department of Transportation's budget. The Free Access System is being funded by the State Board of Elections with the use of Title II Help America Vote Act funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all citizens.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government: Yes

(2) State what unit, part, or division of local government this administrative regulation will affect: All county clerks' offices. State the aspect or service of local government to which this administrative regulation relates: the conduct of elections and absentee voting.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

(a) Revenues: This administrative regulation will not generate any revenues for the local governments.

(b) Expenditures: The costs for the email addresses are already provided in local budgets and/or the Department of Transportation's budget. The Free Access System is being funded by the State Board of Elections with the use of Title II Help America Vote Act funding. Participation in the Free Access System is free to the counties.

(c) Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff and 1973ff-1, the Uniformed and Overseas Citizen Absentee Voting Act and the Military and Overseas Voter Empowerment Act.

(2) State compliance standards: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General.

(3) Minimum or uniform standards contained in the federal mandate: This administrative regulation implements procedures for Kentucky counties to follow to provide for the use of the Federal Post Card Application (FPCA) for registering to vote and requesting an absentee ballot for military and overseas voters, to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, blank balloting, and election materials and information, and provides a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot has been received by the county clerk.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

OFFICE OF THE ATTORNEY GENERAL
Consumer Protection Division
(Amendment)

40 KAR 2:350. Debt adjusters.

RELATES TO: KRS 380.010, 380.030, 380.040, 380.050, 380.990, 2010 Ky Acts Ch. 86 secs. 2, 5, 6, 7, 8, 9, 11, and 12

STATUTORY AUTHORITY: KRS 380.040(5), 380.050

NECESSITY, FUNCTION AND CONFORMITY: KRS 380.050 requires the Attorney General to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 380, relating to debt adjusting. KRS 380.040(5) requires a person to file a registration form developed by the Attorney General. This administrative regulation establishes the registration and renewal process and incorporates by reference the forms to be utilized by persons subject to registration.

Section 1. Definitions. (1) "Debt Adjuster Bond" means the "Commonwealth of Kentucky Debt Adjuster Surety Bond, Form DA-3", incorporated by reference in this administrative regulation.

(2) "Debt Adjuster Irrevocable Letter of Credit" means the "Commonwealth of Kentucky Debt Adjuster Irrevocable Letter of Credit", Form DA-4, incorporated by reference in this administrative regulation.

(3) "Division" means the Office of the Attorney General, Consumer Protection Division.

(4)[~~(2)~~] "Registrant" means a person filing the registration form

required by KRS 380.040(5) and this administrative regulation.

(5)[~~(3)~~] "Registration form" means the "Commonwealth of Kentucky Debt Adjuster Registration Statement".

Section 2. Registration. (1) The initial registration, or a renewal of registration, for a person engaging in debt adjusting pursuant to KRS Chapter 380 shall be made on the "Commonwealth of Kentucky Debt Adjuster Registration Statement". Each person engaging in debt adjusting shall register by:

(a) Completing the information required by the registration form and submitting:

1. The legal name of the registrant;

2. Whether the registration is an initial or renewal registration;

3. The registrant's contact person, including name, title, telephone number, fax number, and, optionally, e-mail address;

4. Other names under which the registrant conducts business, and provide copies of all filings in Kentucky regarding the use of an assumed name or names;

5. The registrant's principal physical business location, which shall not be a post office box, including street address, city, state, and zip code;

6. The registrant's mailing address if different from the principal physical business location, including address, city, state, and zip code;

7. The registrant's telephone number;

8. The registrant's fax number;

9. The registrant's Web site;

10. The registrant's agent for service of process in Kentucky, including name, address, city, state, and zip code;

11. The location where the registrant keeps or maintains records of its customers who reside in Kentucky if different from the principal physical business location, including address, city, state, and zip code;

12. The registrant's type of business structure, indicating whether it is a corporation, limited liability company, general partnership or joint venture, limited partnership, natural person, or other type of structure and describing such other type, the state under the laws of which the business structure was formed, and including a copy of registrant's certificate of authority to transact business in the Commonwealth of Kentucky issued by the Kentucky Secretary of State or other evidence of authority to transact business in the Commonwealth of Kentucky and describing such other evidence;

13. A description of the debt adjusting services the registrant will offer, sell or provide to Kentucky residents, and identifying whether the registrant engages in debt adjusting in relation to any debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property;

14. The registrant's fee schedule, indicating the amount of the fee for initial set-up, the amount of the consultation fee, the amount and frequency of the service fee or other periodic fee, the amount of the bad check charge, and the amount and frequency of any other fee or fees and describing such other fee or fees;

15. The registrant's officers, directors, trustees, general partners, limited partners, and sole proprietor, as applicable, and any person having management responsibilities in the registrant's business activities, including name, address, telephone number, title or position held, and percentage of ownership interest;

16. The financial institution in which the registrant will maintain a trust account into which Kentucky consumer funds will be deposited and withdrawn to pay respective creditors, including the name, address, city, state, zip code, telephone number, and fax number;

17. A sample of each type of contract or agreement for the registrant's debt adjuster services with Kentucky residents;

18. The aggregate amount of all deposits made with the registrant by all debtors in each of the six (6) months preceding the filing of this registration;

19. The aggregate amount of all deposits made with the registrant by all Kentucky residents in each of the twelve (12) months preceding the filing of this registration;

20. Information regarding each applicable insurance policy, including policy number, the name of the insurer that issued the policy, whether the division is named as an additional interested party, whether the insurance policy covers errors and omissions, employee dishonesty, depositor's forgery, computer fraud, or violations of KRS Chapter 380, the policy amount, the deductible amount, the insurer's rating and the rating organization, and including a complete copy of the insurance policy and declarations or, if a complete copy of the insurance policy and declarations was previously provided to the division, a copy of the current declarations or certificate of coverage applicable to the policy;

21. A completed Debt Adjuster Bond, or, in lieu thereof, a completed Debt Adjuster Irrevocable Letter of Credit;

22. A list of each state in which the registrant is registered or licensed to provide debt adjuster services and the time of filing the registration;

23. The signature and oath of the registrant, using the following oath: "I hereby swear or affirm that I am an authorized representative of the registrant set forth above, and that the statements contained herein and attachments hereto are true and correct", and including the printed name and title of the person signing the oath;

24. A completed notarization of the signature and oath of the registrant, including the seal of the notary public;[~~The required information identifying the registrant's business structure including:~~

~~a. Articles of incorporation or organization;~~

~~b. Partnership or joint venture agreements; and~~

~~c. Evidence of registration or qualification to do business in the Commonwealth of Kentucky;~~

~~2. A copy of the insurance policy; and~~

~~3. Sample contract of registrant's services;~~]

(b) Filing the original of the registration form and accompanying documentation with the Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601; and

(c) Paying the fee required by KRS 380.040(5).

(2) Registration shall be valid for one (1) year from the effective date stated in the written confirmation[~~of approval~~] of registration provided by the division, and may be renewed annually by making the required filing and paying the renewal fee.

(3) Deadline for filing.

(a) The initial registration form and fee shall be filed with the division prior to the date the registrant will engage in debt adjusting pursuant to KRS Chapter 380.

(b) The renewal registration form and fee shall be filed with the division at least four (4) weeks prior to the expiration of the registration.

(c) The registration form shall be considered filed as of the date it is:

1. Delivered to the Division; or

2. Deposited in the mail or with a commercial postal service on or before the due date, as indicated by the postmark applied by the U.S. Postal Service or official mark applied by a commercial postal service. The mark made by a privately-held postage meter shall not be considered in determining the date of filing.

(4)(a) If the Division determines that the registration form or the materials submitted with the registration form do not comply with KRS Chapter 380 or contain all information or materials required by KRS Chapter 380 or this administrative regulation, the division shall notify the registrant in writing, specifying the noncompliance or the information or materials that were[~~was~~] not completed in or provided with the registration form.

(b) The registration shall not be effective until a registration form or an amended registration form is filed with the division that contains all information and materials required by KRS Chapter 380 and this administrative regulation.

(c) The division shall provide a written confirmation of registration.

Section 3. A person shall not engage in debt adjusting prior to the timely filing of a complete and accurate registration which has been confirmed by the division pursuant to Section 2(4)(c) of this administrative regulation.

Section 4. Annual Audit. (1) The annual audit required by KRS 380.040(6) shall include an audit of:

(a) The registrant's financial statements and records;

(b) The trust accounts required by KRS 380.040(1)(b);

(c) The registrant's compliance with the requirements of KRS Chapter 380; and

(d) The registrant's compliance with the requirements of this administrative regulation.

(2) The Commonwealth of Kentucky Debt Adjuster Audit Checklist, Form DA-2, shall be used for purposes of the annual audit and filed with the results of the annual audit.

(3) The results of the audit and the auditor's opinion filed with the division shall be accompanied by a certification from each individual auditor joining in the opinion. The certification shall include:

(a) The auditor is an independent, third-party certified public accountant;

(b) The states in which the auditor is licensed as a certified public accountant; and

(c) The identification number for each license.

(4) The results of the audit and the auditor's opinion, and the certification by each auditor, shall be filed with each renewal registration form, and shall be no older than twelve (12) months prior to the date of filing of the renewal registration form.

Section 5. The trust accounts required by KRS 380.040(1)(b) shall be maintained in a federally insured financial institution.

Section 6. (1) A person engaged in debt adjusting shall notify the division in writing at the address shown in Section 2(1)(b) of this administrative regulation, or by electronic mail or fax with prior approval of the division, within five (5) business days of any cancellation, nonrenewal, modification, or change[~~change in, or cancellation of~~], or receipt of notice of any cancellation, nonrenewal, modification, or change[~~cancellation~~] of, the insurance coverage required by KRS 380.040(7), the bond required by KRS 380.040(8) and this regulation, or the irrevocable letter of credit accepted in lieu of the bond pursuant to KRS 380.040(8) and this administrative regulation.

(2) Except as required by subsection (1) of this section, within thirty (30) days of any material change in the information provided on or submitted with the registration form, a registrant shall notify the division in writing at the address shown in Section 2(1)(b) of this regulation, or by electronic mail or fax with prior approval of the division of each change and submit an updated registration form. The annual renewal date for the registrant shall not be affected by the filing required by this section.

(3) A notice or letter from the division to a registrant may be sent by first-class regular mail to a last-known address as shown in the registrant's last filing with the division.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Commonwealth of Kentucky Debt Adjuster Registration Statement", Form DA-1, July 2010[~~2005~~]; and

(b) The "Commonwealth of Kentucky Debt Adjuster Audit Checklist", Form DA-2, July 2010[~~2005~~].

(c) The "Commonwealth of Kentucky Debt Adjuster Bond", Form DA-3 July 2010.

(d) The "Commonwealth of Kentucky Debt Adjuster Irrevocable Letter of Credit", Form DA-4, July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JACK CONWAY, Attorney General

APPROVED BY AGENCY: June 10, 2010

FILED WITH LRC: June 15, 2010 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2010 at 10 a.m. at Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Suite 200, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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 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 August 2, 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: Kevin R. Winstead, Assistant Attorney General, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 696-5389, fax (502) 573-8317.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the registration process and certain requirements for the trust accounts, annual audit, insurance coverage, bond and irrevocable letter of credit applicable to debt adjusters pursuant to KRS Chapter 380 as amended and enacted by HB 166 (2010 Ky. Acts ch. 86), and incorporates a registration form, an audit checklist, a bond form, and an irrevocable letter of credit form to be utilized by persons subject to this administrative regulation.

(b) The necessity of this administrative regulation: This regulation is necessary for the efficient and uniform application of the requirements of HB 166, which amended current sections of and enacted new sections in KRS Chapter 380. KRS 380.050 requires the Attorney General to promulgate administrative regulations to ensure the proper administration and enforcement of KRS Chapter 380, and KRS 380.040(5) requires a debt adjuster to file an initial registration form and renew the registration annually in accordance with administrative regulations promulgated by the Attorney General.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 380, as amended and enacted by HB 166, imposes certain requirements for debt adjusters, including registration (KRS 380.040(5)), trust accounts (KRS 380.040(1)(b)), fee limits (KRS 380.040(2)), annual audits (KRS 380.040(6)), insurance coverage (KRS 380.040(7)), a surety bond or irrevocable letter of credit in lieu thereof (KRS 380.040(8), prohibited acts and representations (KRS 380.040(9)), consumer cancellation rights and notice thereof in the contract (2010 Ky. Acts ch. 86, sec. 2), privacy and information security regarding consumer's personal information (2010 Ky. Acts ch. 86, secs. 7, 8 and 9), and requirements and limitations on contracts (2010 Ky. Acts ch. 86, sec. 11). This administrative regulation establishes the registration process and certain requirements for the trust accounts, annual audit, insurance coverage, surety bond and irrevocable letter of credit applicable to debt adjusters, and incorporates a registration form, an audit checklist, a bond form, and an irrevocable letter of credit form to be utilized by persons subject to this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS Chapter 380, amended and enacted by HB 166, by establishing the registration process and certain requirements for the trust accounts, annual audit, insurance coverage, surety bond and irrevocable letter of credit applicable to debt adjusters, and incorporating an amended registration form, an amended audit checklist, a new bond form, and a new irrevocable letter of credit form to be utilized by persons subject to this administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendments to the existing administrative regulation will create and incorporate a bond form and an irrevocable letter of credit form to be utilized by persons subject to this admin-

istrative regulation. The amendments will also amend the existing registration form and audit checklist utilized by persons subject to this administrative regulation to require additional information or materials relating to certain new requirements for debt adjusters as amended and enacted by HB 166 and to otherwise revise certain information or materials currently required.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary for the efficient and uniform application of the requirements of HB 166, which amended current sections of and enacted new sections in KRS Chapter 380. KRS 380.050 requires the Attorney General to promulgate administrative regulations to ensure the proper administration and enforcement of KRS Chapter 380, and 380.040(5) requires a debt adjuster to file an initial registration form and renew the registration annually in accordance with administrative regulations promulgated by the Attorney General.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 380, as amended and enacted by House Bill 166, imposes certain requirements for debt adjusters, including registration (KRS 380.040(5)), trust accounts (KRS 380.040(1)(b)), fee limits (KRS 380.040(2)), annual audits (KRS 380.040(6)), insurance coverage (KRS 380.040(7)), a surety bond or irrevocable letter of credit in lieu thereof (KRS 380.040(8), prohibited acts and representations (KRS 380.040(9)), consumer cancellation rights and notice thereof in the contract (2010 Ky. Acts ch. 86, sec. 2), privacy and information security regarding consumer's personal information (2010 Ky. Acts ch. 86, secs. 7, 8 and 9), and requirements and limitations on contracts (2010 Ky. Acts ch. 86, sec. 11). The amendments to the existing administrative regulation will create and incorporate a bond form and an irrevocable letter of credit form to be utilized by persons subject to this administrative regulation. The amendments will also amend the existing registration form and audit checklist utilized by persons subject to this administrative regulation to require additional information or materials relating to certain new requirements for debt adjusters as amended and enacted by House Bill 166 and to otherwise revise certain information or materials currently required.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to the existing administrative regulation will assist in the effective administration of KRS Chapter 380, amended and enacted by HB 166, by creating and incorporating a bond form and an irrevocable letter of credit form to be utilized by persons subject to this administrative regulation, and by amending the existing registration form and audit checklist utilized by persons subject to this administrative regulation to require additional information or materials relating to certain new requirements for debt adjusters as amended and enacted by HB 166 and to otherwise revise certain information or materials currently required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals, partnerships, associations, corporations, limited liability companies, trusts and other entities engaged in debt adjusting, for the benefit of members of the public. It is estimated that the approximately 41 debt adjusters currently registered with the Attorney General will be affected by this administrative regulation. Based on information available from other states, it is estimated that approximately up to 20 persons engaged in debt adjusting but not currently registered with the Attorney General will also be affected by this administrative regulation, but the actual number is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The enactment of HB 166 adds additional requirements and amends some existing requirements for a person engaging in debt adjusting with Kentucky residents. This administrative regulation will impact debt adjusters by amending the registration process to include certain of the additional requirements, incorporating an amended registration form and an amended audit checklist form to be utilized by persons subject to this administrative regulation, and incorporating a bond form and an irrevocable letter of credit form to be utilized by persons subject to this administrative regulation. Debt adjusters registered with the Attorney General prior to the effective date of this amended administrative regulation will be required to use the amended registration form and the amended audit checklist form at the time of filing a renewal registration. All debt adjusters will be required to comply with the new surety bond or irrevocable letter of credit requirement enacted in HB 166 as of the effective date of that law on July 15, 2010, and shall use the surety bond form or irrevocable letter of credit form incorporated by reference with this amended administrative regulation. Additionally, if compliance with the requirements of House Bill 166 will cause material changes to a current registration with the Attorney General, the debt adjuster shall notify the Attorney General within 30 days of the change as currently required by Section 6(2) of this administrative regulation. This could include, for example, changes to a sample contract form or insurance policy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The specific cost of compliance may vary by debt adjuster based on a number of factors, including, but not limited to, the face amount and deductible amount of the insurance obtained by the debt adjuster, the amount of the surety bond obtained by the debt adjuster, and the cost of an irrevocable letter of credit if the debt adjuster provides that in lieu of the surety bond. Some costs of compliance may decrease because the amended administrative regulation does not require copies of certain organizational documents (such as, for instance, articles of incorporation) and does not require a complete copy of the insurance policy or policies if they were provided with the previous registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation, a person engaging in debt adjusting with Kentucky residents will be registered with the Attorney General as required by KRS 380.040(5).

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund appropriations and agency receipts.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None expected at this time.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, the administrative regulation does not create any fees. KRS 380.040(5) currently provides for a fee of $250 to register as debt adjuster.

(9) TIERING: Tiering is not applied in this administrative regulation because the administrative regulation does not disproportionately impact certain classes of regulated entities and the registration requirements of the statutes apply uniformly to any person that engages in debt adjusting.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:370. Kentucky Retirement Systems Personnel Policies.

RELATES TO: KRS Chapter 11A, 18A.095, 61.394, 61.645(9)(c), (d), (g), 164.357, Chapter 218A, 335B.010(4), 335B.020, Chapter 342, 344.030, 344.040, 29 C.F.R. 825, 20 U.S.C. 2601, 21 U.S.C. 812

STATUTORY AUTHORITY: KRS 61.645(9)(c), (d), (g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to

61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.645(9)(c) provides that, effective December 1, 2002, all employees of the Kentucky Retirement Systems shall be transferred to a personnel system adopted by the board of trustees. KRS 61.645(9)(d) requires the board of trustees to promulgate administrative regulations to establish a fair, equitable, and comprehensive personnel policy. This administrative regulation establishes the Kentucky Retirement Systems Personnel Policies.

Section 1. Definitions. (1) "Class" means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and other characteristics that the same title, the same tests of fitness, and the same schedule of compensation have been applied to each position in the group.

(2) "Class series" means a group of positions that are similar as to the duties performed and have varying levels of discretion, responsibility, and minimum requirements of training, experience, or skill.

(3) "Controlled substance" means a controlled substance as established in Schedules I through V of 21 U.S.C. 812 or KRS Chapter 218A.

(4) "Drug-free workplace" means the site for the performance of work as an employee of Kentucky Retirement Systems.

(5) "Demotion" means the movement of an employee from a position in one (1) class to a position in another class having a lower minimum salary range and less discretion or responsibility.

(6) "Promotion" means a change of rank of an employee from a classified position with status in one (1) class to a classified position with status in another class having a higher minimum salary, carrying a greater scope of discretion or responsibility, and usually moving from one (1) classification series to another rather than building upon experience gained in the same series.

(7) "Transfer" means the movement of an employee from a position to another of the same grade having the same or comparable salary range and the equivalent level of responsibility.

(8) "Unlawful" means an activity that is prohibited by a federal or state criminal statute and does not require a finding of guilt or imposition of a sentence, or both, by a judicial body charged with the responsibility of adjudicating violations of federal or state criminal drug, alcohol, or intoxicant statutes.

Section 2. Incorporation by Reference. (1) The "Kentucky Retirement Systems Personnel Policies", as amended May 20, 2010[~~November 20, 2008~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 20, 2010

FILED WITH LRC: May 24, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing 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 this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8815.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the "Kentucky Retirement Systems Personnel Policies."

(b) The necessity of this administrative regulation: KRS 61.645(9)(c) provides that, effective December 1, 2002, all employees of the Kentucky Retirement Systems shall be transferred to a personnel system adopted by the Board of Trustees. KRS 61.645(9)(d) requires the Board of Trustees to promulgate administrative regulations to establish a fair, equitable, and comprehensive personnel policy. This administrative regulation established the "Kentucky Retirement Systems Personnel Policies."

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.645(9)(d) requires the board to adopt by administrative regulation a fair, equitable, and comprehensive personnel policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 61.645(9)(d) requires the board to adopt by administrative regulation a fair, equitable, and comprehensive personnel policy.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides for an Employee Recognition Award (ERA), which provides a lump sum payment to an employee that has demonstrated a sustained level of exceptional job performance. It also provides for the option to provide lump sum payments to an employee who obtains professional or training certifications.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide for an Employee Recognition Award (ERA) for an employee that has demonstrated a sustained level of exceptional job performance and for the option to provide lump sum payments to an employee who obtains professional or training certifications.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.645(9)(d) requires the Board of Trustees to promulgate administrative regulations to establish a fair, equitable, and comprehensive personnel policy. This amendment provides for lump sum payments to an employee that has demonstrated a sustained level of exceptional job performance or for the option to provide lump sum payments to an employee who obtains professional or training certifications.

(d) How the amendment will assist in the effective administration of the statutes: The board will be able to provide these lump sum payments to employees that have demonstrated a sustained level of exceptional job performance or who obtains professional or training certifications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The approximately 251 employees of Kentucky Retirement Systems.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The potential for a lump sum payment for outstanding performance or obtaining professional or training certifications.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:040. Standards of practice.

RELATES TO: KRS 324A.035, 324A.050(1)(j), 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339

STATUTORY AUTHORITY: KRS 324A.035(3)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally-related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the standards of professional practice.

Section 1. The following certificate holders or licensees shall comply with the "Uniform Standards of Professional Appraisal Practice" in effect at the time the services were performed:
(1) A certified general real property appraiser;
(2) A certified residential real property appraiser;
(3) A licensed real property appraiser;
(4) An associate real property appraiser; and
(5) A licensed nonfederal real property appraiser.

Section 2. An appraisal report made with regard to a federally related transaction shall be in writing.

Section 3. The standard for the calculation and reporting of above-grade square footage and below-grade square footage in single-family houses shall be the "American National Standard for Single-Family Residential Buildings; Square Footage-Method for Calculating", ANSI Z765-2003, as approved by the American National Standards Institute, Inc.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Uniform Standards of Professional Appraisal Practice, 2010-2011[~~2008-2009~~] edition; and

(b) American National Standard for Single Family Residential Buildings; Square Footage Method for Calculating, ANSI Z765-2003.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, (202) 347-7722.

DORSEY HALL, Chair

APPROVED BY AGENCY: May 28, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2010 at 1 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on August 2, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658; fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the standards of practice for certified and licensed appraisers.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the standards of practice required of certified and licensed appraisers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the standards of practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the standard of practice required from certificate 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: The amendment updates the reference to identify the 2010-2011 edition of the Uniform Standards of Professional Appraisal Practice as the governing standard.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to specify the standards of practice for certificate holders and licensees.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The standards of practice will assist by clearly identifying the practice required of certificate holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately one thousand five hundred persons certified by the board.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The certificate holders will be required to comply with the standards identified by this amendment.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this 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 applied as the regulation is applicable to all certificate holders in the class.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

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

(5) Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:201. Recreational fishing limits.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)[~~150.025~~], 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife and to regulate bag or creel limits[~~protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing~~]. KRS 150.470 authorizes the department to promulgate creel and size limits for fish. [~~EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.~~] This administrative regulation establishes fish size limits, daily creel[~~catch~~] limits, and [~~field~~] possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Cull" means to release a previously caught [~~live~~] fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5) "Daylight hours" are defined by KRS 150.010(6).

(6) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(7) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(8) "Processed fish" means a fish that has been gutted and head removed.

(9) "Recreational fishing" means the act of taking or attempting to take for personal use, and not for sale, any freshwater fish species by traditional fishing methods, including a line that is held in the hand or is attached to a rod that is held in the hand or closely attended, and to which one or more hooks are attached.

(10) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(11) "Single hook" means a hook with no more than one (1)

point.

(12) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(13) "Slot limit" means a minimum and maximum size limit that requires a fish of that size range to be released.

(14) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Size Limits, Daily Creel Limits, and Possession Limits. (1) [~~Except as established in Section 4 of this administrative regulation or by 301 KAR 1:180,~~] A person fishing in public or private waters shall observe the following daily creel limits and size limits, except as specified in Section 3 of this administrative regulation or by 301 KAR 1:180. [~~The possession limit shall be two (2) times the daily creel limit unless otherwise specified in Section 4 of this administrative regulation.~~]

(a) Black bass: daily creel limit, six (6).

1. Largemouth bass and smallmouth bass: size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass: no size limit.

(b) Rock bass: daily creel limit, fifteen (15).

(c) Sauger, walleye, and their hybrids: daily creel limit, singly or in combination, six (6); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger.

(d) Muskellunge: daily creel limit, one (1); size limit, thirty (30) inches.

(e) Chain pickerel: daily creel limit, five (5); no size limit.

(f) White bass and hybrid striped bass singly or in combination: daily creel limit, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(g) Striped bass: daily creel limit, five (5); size limit, fifteen (15) inches.

(h) Crappie: daily creel limit, thirty (30); no size limit.

(i) Rainbow trout and brown trout, singly or in combination: daily limit, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; twelve (12) inch size limit on brown trout.

(j) Redear sunfish: daily creel limit, twenty (20); no size limit.

(k) Yellow bass: daily creel limit, thirty (30); no size limit.

(2) The possession limit shall be two (2) times the daily creel limit, except as specified in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4)[~~(3)~~] A person shall release lake sturgeon.

(5)[~~(4)~~] A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; and[~~or~~]

(c) Of a particular species[~~,~~] if a person already possesses the daily creel limit for that species [~~established by this administrative regulation~~].

(6)[~~(5)~~] A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7)[~~fishing, on the shoreline, or while on the water except that:~~

~~(a)~~] Fishing tournament organizers and their representatives, excluding [~~the~~] tournament anglers, may possess more than[~~have over~~] the daily creel limit of tournament caught fish:

(a)[~~1.~~] At the weigh-in site;

(b)[~~2.~~] At the release site; or

(c)[~~3.~~] When transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8)[~~(b)~~] Fishing tournament organizers and their representatives, excluding the tournament anglers, may possess more than[~~have over~~] the daily creel limit of unprocessed tournament caught fish that expired at the sites specified in subsection (7) of this section for subsequent[~~established in paragraph (a) of this subsection for~~] disposal by one (1) of the following methods:

(a)[~~1.~~] Bagged, sealed, and placed in a garbage dump;

(b)[~~2.~~] Given to a charity for the purposes of human consumption; or

(c)[~~3.~~] Transferred to a conservation officer or [~~to~~] another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists:

(a) While fishing;

(b) On the shoreline; or

(c) While on the water.

(10)[~~(6) Any part of the head or tail of a fish with a size or daily creel limit shall not be removed while fishing, on the shoreline, or while on the water.~~

~~(7)~~] A person may[~~who wishes to~~] possess sport fish below the size limit or beyond the possession limit if the person[~~shall~~]:

(a) Obtains[~~Obtain~~] the fish from a licensed fish propagator or other legal source; and

(b) Retains[~~Retain~~] a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the[~~(8) All trout shall be released unless a~~] person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to[~~by~~] KRS 150.170(3); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12)[~~operator.~~

~~(9)~~] A person fishing in an artificial bait-only area shall not attach any of the following items to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and[~~,~~] putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year round.

Section 3. [~~Fishing Season. The fishing season shall be open year round.~~

~~Section 4.~~] Exceptions to Statewide Administrative Regulations. [~~A person fishing in the waters listed in this section shall observe the following special requirements. Except as specified in this section,~~] All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the following exceptions:[~~these bodies of water.~~]

(1) AJ Jolly Lake. A person shall release all flathead catfish.

(2) Bad Branch, Letcher County. A person shall only fish[~~not fish except~~] with [~~an~~] artificial bait with a single hook.

(3)[~~(2)~~] Barkley Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches; daily creel limit, twenty (20).

(c) Sauger: size limit, fourteen (14) inches.

(4) Barren River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Largemouth and smallmouth bass: size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge.

(5)[~~(3) Barren River Lake shall extend up:~~

~~(a) Barren River to the Highway 100 bridge;~~

~~(b) Long Creek to the Highway 100 bridge;~~

~~(c) Beaver Creek to the Highway 1297 bridge;~~

~~(d) Skaggs Creek to the Mathews Mill Road bridge; and~~

~~(e) Peter Creek to the Peter Creek Road bridge:~~

~~1. Crappie: size limit, nine (9) inches.~~

~~2. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under fifteen (15) inches.~~

~~(4)~~] Beaver Lake, Anderson County.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(6)[~~(5)~~] Bert Combs Lake, Clay County. A person shall not possess shad or use shad for bait.

(7)[~~(6)~~] Beshears Lake, Caldwell County. Channel catfish: size limit, twelve (12) inches.

(8)[~~(7)~~] Boltz Lake, Grant County.

(a) A person shall not possess shad or use shad for bait.

(b) Channel catfish: size limit, twelve (12) inches.

(9)[~~(8)~~] Briggs Lake, Logan County. A person shall not possess shad or use shad for bait.

(10)[~~(9)~~] Buckhorn Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Muskellunge: size limit, thirty-six (36) inches.

(c) Crappie size limit, nine (9) inches.

(11)[~~(10)~~] Bullock Pen Lake, Grant County. Channel catfish: size limit, twelve (12) inches.

(12)[~~(11)~~] Carnico Lake, Nicholas County. Largemouth bass: size limit, fifteen (15) inches.

(13)[~~(12)~~] Carpenter Lake, Daviess County. A person shall not possess shad or use shad for bait.

(14)[~~(13)~~] Carr Creek Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(15)[~~(14)~~] Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass: no size limit.

(c) A person shall not possess shad or use shad for bait.

(16)[~~(15)~~] Cave Run Lake.

(a) Largemouth bass: slot limit - a person shall release fish between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass: size limit, eighteen (18) inches.

(c) Muskellunge: size limit, thirty-six (36) inches.

(17)[~~(16)~~] Cedar Creek Lake, Lincoln County.

(a) Largemouth bass: size limit, twenty (20) inches; daily creel limit, one (1).

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(18)[~~(17)~~] Chimney Top Creek, Wolfe County. Brown trout: size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only.

(19)[~~(18)~~] Corinth Lake, Grant County.

(a) A person shall not possess shad or use shad for bait.

(b) Channel catfish: size limit, twelve (12) inches.

(20)[~~(19)~~] Cumberland Lake shall extend up:

(a) The Cumberland River to Cumberland Falls;

(b) The Big South Fork to Devils Jump;

(c) The Rockcastle River to The Narrows; and

(d) The Laurel River to Laurel River Dam:

1. Largemouth: size limit, fifteen (15) inches.

2. Smallmouth bass: size limit, eighteen (18) inches.

3. Striped bass: size limit, twenty-four (24) inches; daily creel limit, two (2).

4. Crappie: size limit, ten (10) inches.

(21)[~~(20)~~] Cumberland River downstream from Barkley Lake Dam. Sauger: size limit, fourteen (14) inches.

(22)[~~(21)~~] Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries.

(a) Brown trout: size limit, twenty (20) inches; daily creel limit (no cull), one (1).

(b) Brook trout: size limit, fifteen (15) inches; daily creel limit one (1), with no culling.

(c) Rainbow trout: slot limit - a person shall release fish between fifteen (15) and twenty (20) inches. Daily creel limit with no cull, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(d)[~~(c)~~] A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(e)[~~(d)~~] Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(23)[~~(22)~~] Dale Hollow Lake.

(a) Smallmouth bass: slot limit - a person shall release fish between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and its hybrids: daily creel limit, five (5); size limit, sixteen (16) inches.

(c) Sauger: daily creel limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and lake trout:

1. Daily creel limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout.

2. Daily creel limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches.

(e) Largemouth bass: size limit, fifteen (15) inches.

(f) Black bass: aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie: size limit, ten (10) inches; daily creel limit, fifteen (15).

(24)[~~(23)~~] Dewey Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(25)[~~(24)~~] Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall not fish except with an artificial bait.

(26)[~~(25)~~] Doe Run Lake, Kenton County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait.

(27)[~~(26)~~] Dog Fork, Wolfe County. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(28)[~~(27)~~] Elkhorn Creek downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches.

(29)[~~(28)~~] Elmer Davis Lake, Owen County.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(30)[~~(29)~~] Fishtrap Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(31)[~~(30)~~] Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish: daily limit, five (5); size limit, fifteen (15) inches.

(32)[~~(31)~~] General Butler State Park Lake, Carroll County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait.

(33)[~~(32)~~] Grayson Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(34)[~~(33)~~] Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad for bait.

(b) Bluegill and sunfish: daily and possession limit, fifteen (15) fish.

(35)[~~(34)~~] Green River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Muskellunge: size limit, thirty-six (36) inches.

(36)[~~(35)~~] Guist Creek Lake, Shelby County. Channel catfish: size limit twelve (12) inches.

(37)[~~(36)~~] Jerrico Lake, Henry County.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(38)[~~(37)~~] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches; daily limit, twenty (20).

(c) Sauger: size limit, fourteen (14) inches.

(39)[~~(38)~~] Kincaid Lake, Pendleton County. Channel catfish: size limit, twelve (12) inches.

(40)[~~(39)~~] Lake Blythe, Christian County. Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(41)[~~(40)~~] Lake Malone, Muhlenburg and Logan County.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(42)[~~(41)~~] Lake Mingo, Jessamine County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait.

(43)[~~(42)~~] Lake Pollywog, Grant County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait.

(44)[~~(43)~~] Lake Reba, Madison County.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily creel limit three (3).

(b) A person shall not possess shad or use shad for bait.

(45)[~~(44)~~] Lake Shelby, Shelby County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait.

(46)[~~(45)~~] Laurel River Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Smallmouth bass: size limit, eighteen (18) inches; daily creel limit, two (2).

(c) Crappie: size limit, nine (9) inches; daily creel limit, fifteen (15).

(47)[~~(46)~~] Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(48)[~~(47)~~] Leary Lake, Grant County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish: daily limit, four (4).

(49)[~~(48)~~] Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish: daily creel limit, four (4).

(d) A person shall not possess shad or use shad for bait.

(50)[~~(49)~~] Marion County Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(51)[~~(50)~~] McNeely Lake, Jefferson County. A person shall not possess shad or use shad for bait.

(52)[~~(51)~~] Mill Creek Lake, Powell County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) A person shall not possess shad or use shad for bait.

(53)[~~(52)~~] New Haven Optimist Lake, Nelson County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait.

(54)[~~(53)~~] Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(55)[~~(54)~~] Ohio River.

(a) Walleye, sauger, and their hybrids: no size limit; daily creel limit, ten (10), singly or in combination.

(b) White bass, yellow bass, striped bass and their hybrids: daily creel limit, thirty (30), no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(56)[~~(55)~~] Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout: size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only.

(57)[~~(56)~~] Paintsville Lake.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(b) Smallmouth bass: size limit, eighteen (18) inches.

(58)[~~(57)~~] Parched Corn Creek, Wolfe County. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(59)[~~(58)~~] Pennyrile Lake, Christian County. Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(60)[~~(59)~~] Pikeville City Lake, Pike County. Catch and release largemouth bass fishing (no harvest).

(61)[~~(60)~~] Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(62)[~~(61)~~] Rough River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(63)[~~(62)~~] Shanty Hollow Lake, Warren County.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(64)[~~(63)~~] Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(65)[~~(64)~~] Sportsman's Lakes, Franklin County.

(a) A person shall not possess shad or use shad for bait.

(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3).

(c) Channel catfish: daily creel limit, four (4).

(66)[~~(65)~~] Spurlington Lake, Taylor County. A person shall not possess shad or use shad for bait.

(67)[~~(66)~~] Sympson Lake, Nelson County. Largemouth bass: size limit, fifteen (15) inches.

(68)[~~(67)~~] Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie: size limit, nine (9) inches; daily creel limit, fifteen (15).

(69)[~~(68)~~] Taylorsville Lake WMA ponds, Spencer County (as designated).

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(70)[~~(69)~~] Tennessee River downstream from Kentucky Lake Dam. Sauger: size limit, fourteen (14) inches.

(71)[~~(70)~~] Wood Creek Lake. Largemouth and smallmouth bass: size limit, fifteen (15) inches.

(72)[~~(71)~~] Yatesville Lake: Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a [~~seasonal~~] catch and release [~~for~~] trout season from October 1 - March 31 for the bodies of water listed in subsection 3 of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all caught trout[~~use artificial bait and release trout~~].

(3) The following streams shall be open for the[~~to the seasonal~~] catch and release [~~for~~] trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(j) Middle Fork of Red River in Natural Bridge State Park in Powell County;

(k) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park; and

(l) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County.

(4) The seasonal catch and release for trout season for Swift Camp Creek in Wolf County shall be October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily creel limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) Event sponsors shall post signs informing anglers of the special limits a minimum of twenty-four (24) hours before the event.

Section 7. Creel and Size Limits for Special Lakes and Ponds. (1) The following requirements shall apply to all bodies of water listed in subsection (2) of this section:

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, one (1);

(b) Channel catfish; daily creel limit, four (4);

(c) Sunfish or bream: daily creel limit, fifteen (15); and

(d) Rainbow trout: daily creel limit, five (5).

(2) Special lakes and ponds:

(a) Anderson County Community Park Lake, Anderson County;

(b) Bloomfield Park Lake, Nelson County;

(c) Bob Noble Park Lake, Nelson County;

(d) Brickyard Pond, Knox County;

(e) Cherokee Park Lake, Jefferson County;

(f) Easy Walker Park Pond, Montgomery County;

(g) Fisherman's Park Lakes, Jefferson County;

(h) Jack C Fisher Park Lake, Daviess County;

(i) Kingdom Come State Park Lake, Harlan County;

(j) Lake Mingo, Jessamine County;

(k) Lake Pollywog, Grant County;

(l) Lower Sportsman's Lake, Franklin County;

(m) Lusby Lake, Scott County;

(n) Martin County Lake, Martin County;

(o) Middleton Mills Long Pond, Kenton County;

(p) Middleton Mills Shelterhouse Pond, Kenton County;

(q) Mike Miller Park Lake, Marshall County;

(r) Miles Park Lake #4, Jefferson County;

(s) Panther Creek Park Lake, Daviess County;

(t) Prisoners Lake, Kenton County;

(u) Scott County Park Lake, Scott County;

(v) Southgate Lake, Campbell County;

(w) Stein Community Park Lake, Campbell County;

(x) Three Springs Lake, Warren County;

(y) Tom Wallace Park Lake, Jefferson County;

(z) Upper Sportsman's Lake, Franklin County;

(aa) Watterson Park Lake, Jefferson County;

(bb) Waverly Park Lake, Jefferson County; and

(cc) Yellow Creek Park Lake, Daviess County.

BENJY KINMAN, Deputy Commissioner

For JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: June 14, 2010

FILED WITH LRC: June 14, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2010, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by August 2, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the sport fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations to regulate bag, creel, and possession limits of game and fish.

(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 limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

(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 restricts harvest of flathead catfish in AJ Jolly Lake, establishes an aggregate catfish harvest limit in Taylorsville Lake of 15 fish, only one of which may be longer than 25 inches, limits the daily harvest of brook trout in the Lake Cumberland tailwater to one fish longer than 15 inches, moves the boundary of Elkhorn Creek from the confluence of the creek and Kentucky River to the first shoal 3,400 feet upstream of the confluence, and identifies Fish-In-The-Neighborhood (FINS) lakes to establish daily harvest limits for catfish, trout, sunfish and largemouth bass.

(b) The necessity of the amendment to this administrative regulation: This amendment restricts the harvest of flathead catfish in AJ Jolly Lake in order to maintain enough of the stocked catfish to determine if they will forage on sunfish in numbers sufficient to reduce sunfish stunting. This is a research project that will be ongoing for at least five years. In Taylorsville Lake, the amendment will reduce daily catfish harvest and reverse the current trend of

overharvest. Based on the average size harvested, anglers can still take at least 29 pounds of catfish daily. The restriction of harvesting only one catfish over 25 inches will allow some catfish to reach trophy size, which is the reason why blue catfish were originally stocked in Taylorsville Lake. Moving Elkhorn Creek's boundary upstream 3,400 feet will allow anglers accessing the Kentucky River to use a boat ramp located immediately above the confluence of Elkhorn Creek and the Kentucky River while remaining in compliance with statewide bass harvest regulations. Elkhorn Creek bass regulations are more restrictive and are intended to protect a high quality smallmouth bass fishery in that stream. Brook trout will be stocked into the Lake Cumberland tailwater in 2011 in order to provide anglers with another quality fish species. Unlike rainbow trout stocked in the tailwater, the brook trout will be managed as a trophy species, and a daily harvest restriction of one fish over 15 inches will ensure that overharvest will not occur and also allow trophy or record-sized fish to be kept. Our urban fishing program consists of 29 ponds that are collectively called Fishing-In-The-Neighborhood (FINS) ponds. The ponds are heavily stocked, but fishing pressure is extremely high. In order to promote more consistent fishing success from stocking date to stocking date, we will implement the program-wide daily creel limits that allow harvest of four catfish, five trout, 15 sunfish, and one bass over 15 inches. The length limit on bass is to promote higher survival to reduce stunting of the sunfish.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who fish for flathead catfish in AJ Jolly Lake, catfish in Taylorsville Lake, brown trout in the Cumberland tailwater, and all species stocked in special lakes and ponds will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers fishing in AJ Jolly Lake are prohibited from harvesting flathead catfish where there was previously no harvest restriction on flathead catfish. Anglers catching catfish in Taylorsville Lake will be limited to 15 catfish with only one being over 25 inches. Previously, there were no harvest restrictions on catfish in Taylorsville Lake. Prior to 2011, there were no brook trout in the Lake Cumberland tailwater, so anglers will need to distinguish the brook trout from brown and rainbow trout in order to comply with the regulation. Moving the Elkhorn Creek boundary upstream from the confluence will only affect those anglers floating downstream in Elkhorn Creek to the boat ramp immediately above the confluence with Kentucky River. In special lakes and ponds, anglers will only be allowed daily harvests of four catfish, five trout, 15 sunfish, and one bass over 15 inches. Previously, statewide regulations were in effect, and there was no limit on catfish or bluegill harvest, and there was a daily harvest of eight trout and six largemouth bass over 12 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 cost incurred by of the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers should benefit in the long run with a higher quality fishing experience at the locations listed in 4(a).

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky were treated equally with these amendments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of 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 establish fishing guidelines to protect fish from being overharvested. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

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 direct revenues will be generated by this administrative regulation.

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

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

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

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

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

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

301 KAR 1:410. Taking of fish by nontraditional[~~other than traditional~~] fishing methods.

RELATES TO: KRS 150.010, 150.025(1), 150.120, 150.170, 150.175, 150.235, 150.360, 150.370, 150.440, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, [~~EO 2008-516~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife and to regulate bag or creel limits. KRS 150.440 authorizes the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 authorizes the department to promulgate regulations for bag or creel limits for fish. This administrative regulation establishes the procedures for taking

sport and rough fish by nontraditional fishing methods including underwater spearing, scuba diving, sport fishing trotlines, jugging and setlines, gigging and snagging, grabbing, bow fishing, and the taking of rough fish from backwaters.[~~150.025(1) authorizes the department to promulgate administrative regulations pertaining to the taking of fish. EO 2008-516, effective June 16, 2008, reorganized and renamed the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet. This administrative regulation establishes the procedures for taking sport and rough fish by other than traditional fishing methods such as: underwater spearing, and "scuba diving", sport fishing trotlines, jugging and setlines, the taking of rough fish from backwaters, gigging and snagging, tickling and noodling (hand grabbing), and bow fishing.~~]

Section 1. Definitions. (1) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(2) "Bowfishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment or a crossbow.

(3) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(4) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(5) "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes those persons who are license exempt pursuant to KRS 150.170.

(6) "Temporary aquatic area" means an area temporarily inundated from, but still connected to a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(7) "Temporary pool" means an area temporarily inundated from, but not connected to a stream, river, or reservoir.

Section 2. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving is prohibited in all lakes owned by the department, except as established in subsections (2) and (3) of this section.

(2) Skin diving and scuba diving shall be permitted in salvage operations upon receipt of written permission by the diver from the Division of Law Enforcement or the local Conservation Officer assigned to the specific body of water in which the diving is to take place.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a victim of drowning.

(4) Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 acres in size or larger as measured at normal or summer pool level.

(a) A participant in this type of sport shall be submerged in the water in which spearing takes place.

(b) Only rough fish shall be taken, and an appropriate fishing license shall be required.

(c) The daily limit shall be fifteen (15) rough fish, not more than five (5) of which shall be catfish.

Section 3. Sport Fishing Trotlines, Jugging, and Setlines. (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the name and address of the person using it.

(2) Each trotline, jug line, and setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if:

(a) It is not properly labeled or tagged; or

(b) It is not checked or baited at least once every twenty-four (24) hours.

(4) A sport fisherman shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple sport fishermen in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) A person using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) Sport fishing trotlines, jugs, or setlines shall not be used in the following waters:

(a) In the Tennessee River within 700 yards of Kentucky Dam;

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area Lakes, Ballard County;

2. Peal Wildlife Management Area Lakes, Ballard County; and

3. Swan Lakes Wildlife Management Area Lakes, Ballard County; or

(d) In the following areas of the Ohio River;

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K&I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9) Taylorsville Lake blue and channel catfish limits:

(a) Aggregate daily creel limit of fifteen (15); and

(b) Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

Section 4. Temporary Aquatic Areas and Temporary Pools. (1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where rough fish may be taken by any method except:

(a) Poison;

(b) Electrical devices;

(c) Firearms; and

(d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person shall be required to possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170.

(4) A person with a valid commercial fishing license may use nets and seines as long as the nets and seines are appropriately tagged, pursuant to 301 KAR 1:146.

(5) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 5. Gigging and Snagging. (1) Gigging and snagging season shall be February 1 through May 10, except as provided in subsections 7 and 9 of this section;

(2) A person shall not:

(a) Gig or snag a sport fish, pursuant to 301 KAR 1:060, except as provided in subsections 7 and 9 of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in a lake with a surface area of less than 500 acres;

(d) Gig from a boat at night;
(e) Snag from a boat; or
(f) Have a snagging rod in excess of seven (7) and one-half (1/2) feet in length, including the handle;
(3) A snagging rod shall be equipped with:
(a) Line;
(b) Guides;
(c) A reel; and
(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used when snagging in:
1. The Green River and its tributaries; and
2. The Rolling Fork River and its tributaries.
(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as provided in subsections 7 and 9 of this section.
(5) A person shall not gig or snag in the following areas or bodies of water:
(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;
(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;
(c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;
(d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;
(e) Cave Run Lake;
(f) Within 200 yards of any dam on a river or stream, except as specified in subsection (7) of this section.
(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.
(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the new U.S. 62 bridge;
(a) For twenty-four (24) hours a day from January 1 through May 31; and
(b) From sunset to sunrise from June 1 through December 31.
(8) A person shall not snag in that section of the Tennessee River from the new U.S. 62 bridge to the Interstate-24 bridge.
(9) A person may snag sport fish or rough fish year round in that section of the Tennessee River from the Interstate-24 bridge to the Ohio River.
(10) A person shall not snag on the Tennessee River:
(a) Under the U.S. 62 bridge;
(b) Under the P & L Railroad bridge; and
(c) From the fishing piers located below the U.S. 62 bridge.
(11) There shall not be a daily creel limit for rough fish except:
(a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8);
(b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8); and
(c) The statewide daily creel limit for paddlefish shall be two (2), in all areas outside those described in paragraphs (a) and (b) of this subsection, where up to eight (8) paddlefish may be taken.
(12) A person shall immediately retain, and not release or cull, any gigged or snagged paddlefish.
(13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled.
(14) All gigged or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for shad or herring.
(15) A person shall immediately cease snagging if:
(a) A daily limit of paddlefish is reached; or
(b) A daily limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8).

Section 6. Grabbing (Tickling and Noodling). (1) The grabbing season for rough fish, also known as tickling and noodling, shall be June 1 to August 31 during daylight hours.
(2) Tickling and noodling shall be permitted in all waters.
(3) The daily creel limit for tickling and noodling shall be fifteen (15) fish, not more than five (5) of which shall be catfish in aggregate.

Section 7. Bow Fishing. (1) A person using archery equipment or a crossbow shall not take:
(a) Sport fish;
(b) More than five (5) catfish in aggregate daily; and
(c) More than two (2) paddlefish daily.
(2) Any paddlefish or catfish shot with archery equipment or a crossbow shall be immediately retained, and not released or culled, and shall count toward a person's daily limit.
(3) Bow fishing shall be open statewide, except:
(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;
(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; and
(c) From a boat in restricted areas below navigation, power generating, or flood control dams.[~~Definitions. (1) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full draw without aid from the archer.~~
~~(2) "Bowfishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment or a crossbow.~~
~~(3) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.~~
~~(4) "Cull" means to replace a fish in your daily creel limit with another fish of the same species.~~
~~(5) "Jugging" is defined by KRS 150.010(15).~~
~~(6) "Rough fish" is defined by KRS 150.010(32).~~
~~(7) "Setline" is defined by KRS 150.010(34).~~
~~(8) "Snagging" is defined by KRS 150.010(35).~~
~~(9) "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes those persons who are license exempt as specified in KRS 150.170.~~
~~(10) "Sport fishing trotline" is defined by KRS 150.010(36).~~

~~Section 2. Sport fishermen shall comply with the requirements in this administrative regulation.~~

~~Section 3. Skin and Scuba Diving and Underwater Spear Fishing. (1) Skin or scuba diving is prohibited in all lakes owned by the department, except as established in subsections (2) and (3) of this section.~~
~~(2) Skin or scuba diving shall be permitted in salvage operations upon receipt of written permission by the diver from the Division of Law Enforcement or the local Conservation Officer assigned to the specific body of water in which the diving is to take place.~~
~~(3) Skin or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a victim of drowning.~~
~~(4) Underwater spearing of fish with hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 acres in size or larger as measured at normal or summer pool level.~~
~~(a) A participant in this type of sport shall be submerged in the water in which spearing takes place.~~
~~(b) Only rough fish shall be taken, and an appropriate fishing license shall be required.~~
~~(c) The daily limit is fifteen (15) rough fish of which not more than five (5) shall be catfish (aggregate).~~

~~Section 4. Sport Fishing Trotlines, Jugging, and Setlines. (1) Tagging and Checking.~~
~~(a) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the name and address of the person using it.~~
~~(b) All sport fishing trotlines, jug lines, and setlines shall be baited, checked and all fish removed at least once every twenty-four (24) hours.~~

(c) The fisherman shall remove these devices from the water, from the bank, or from tree limbs when finished fishing.

(d) Trotlines, setlines, or jug lines that are not properly labeled, remain unchecked, or unbaited for over twenty-four (24) hours shall be confiscated.

(2) Fishing requirements.

(a) An individual sport fisherman shall not use more than:

1. Two (2) sport fishing trotlines;

2. Twenty-five (25) setlines; or

3. Fifty (50) jug lines.

(b) A boat containing multiple sport fishermen shall not use more than fifty (50) jug lines per boat.

(c) Sport fishing trotlines shall be set at least three (3) feet below the water's surface and contain not more than fifty (50) single or multibarbed hooks placed not closer together than eighteen (18) inches.

(d) A jug line or setline shall not have more than one (1) single or multibarbed hook.

(e) An appropriate fishing license shall be required.

(3) Closed waters. Sport fishing trotlines, jugs, or setlines shall not be used in the following waters:

(a) In the Tennessee River within 700 yards of Kentucky Dam;

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area Lakes, Ballard County;

2. Peal Wildlife Management Area Lakes, Ballard County; and

3. Swan Lakes Wildlife Management Area Lakes, Ballard County; or

(d) In the following areas of the Ohio River;

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K&I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

Section 5. Rough Fish from Backwaters. (1) The Commissioner of the Department of Fish and Wildlife Resources may give a conservation officer or another employee of the department authority to establish areas and supervise the taking of all types of rough fish as described in 301 KAR 1:060 from the backwaters, or overflow areas of streams, rivers, or reservoirs as long as the backwater, or overflow area shall be connected with the stream, river or reservoir.

(2) If the backwater is no longer connected with the stream or reservoir, the landowner may, under the supervision of the conservation officer or another employee of the department, direct the taking of rough fish in accordance with this administrative regulation.

(3) A conservation officer or another employee of the department shall not permit the taking of any fish from any slough, backwater, or overflow area without first having the permission of the landowner on whose land the water has overflowed.

(4) The conservation officer or another employee of the department shall be authorized to determine the exact dates and time taking of these rough fish shall commence and cease.

(5) A person engaged in this type of fishing shall have an appropriate fishing license.

(6)(a) Fish may be taken in the areas established in subsection (1) of this section by any method except by the use of poison, electrical devices, or firearms.

(b) If nets and seines are used, they shall be appropriately tagged and the user shall have an appropriate commercial fishing license.

Section 6. Gigging and Snagging. (1) Season and methods of gigging and snagging.

(a) Gigging and snagging shall be permitted February 1 through May 10, except as provided in subsection (3)(c) of this section.

(b) A person may gig or snag from the bank of a stream or lake, but shall not gig or snag from a boat or platform, except that gigging shall be permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.

(c) Persons may gig rough fish through the ice if the surface is frozen thick enough to stand on, and the gigger shall gig while supported by the ice.

(2) Snagging equipment.

(a) A snagging rod shall not exceed a length of seven and one-half (7 1/2) feet including the handle.

(b) The rod shall be equipped with line, guides, and a reel.

(c) Fish may be taken by snagging using one (1) single or treble hook attached to the line except in the Green River and its tributaries and the Rolling Fork River and its tributaries, where five (5) hooks, either single or treble may be used.

(3) Areas open to gigging and snagging.

(a) Gigging or snagging for rough fish shall be permitted night and day in lakes and streams, except as prohibited by subsection (1) of this section and paragraphs (b) and (c) of this subsection.

(b) Gigging and snagging shall be prohibited in the following lakes, streams, and their tributaries:

1. The Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek, and in the Cumberland River in the area below Barkley Lake Dam downstream to US 62 bridge;

2. The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

3. The Rough River, below Rough River Lake Dam Downstream to Highway 54 Bridge in Breckinridge and Grayson Counties;

4. Cave Run Lake;

5. Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line shall be open to gigging and snagging, in season, except that portion of each tributary that is within one-half (1/2) mile of its junction with the Cumberland River; and

6. Within 200 yards of any dam on any stream, except as specified in paragraph (c) of this subsection pertaining to the Tennessee River below Kentucky Lake Dam.

(c) Rough Fish may be taken only by snagging in the Tennessee River below Kentucky Lake Dam; gigging shall be prohibited.

1. Snagging shall be permitted in the Tennessee River between the Kentucky Lake Dam and the new US 62 Bridge twenty-four (24) hours per day from January 1 through May 31.

2. From June 1 through December 31, snagging shall only be permitted from sunset to sunrise (local time) between the Kentucky Lake Dam and the new US 62 Bridge.

3. Snagging shall be prohibited year round in the Tennessee River from the new US 62 Bridge to the I-24 Bridge.

4. Snagging shall be permitted year round in the Tennessee River from the I-24 Bridge to its confluence with the Ohio River.

5. Snagging shall not be permitted under the US 62 bridge, the P&L Railroad bridge, or from the fishing piers located below the new US 62 Bridge.

(4) Creel limits.

(a) The statewide daily creel limit for rough fish taken by gigging and snagging in areas open, except in the Tennessee River below Kentucky Lake Dam and in the Cumberland River below Barkley Lake Dam as established in paragraphs (b) and (c) of this subsection shall be unlimited except that only two (2) paddlefish may be taken daily statewide.

1. All gigged or snagged paddlefish, in all areas open to gigging and snagging, shall be taken into immediate possession and shall not be released or culled.

2. Once the daily limit of paddlefish has been reached, all

~~snagging shall cease.~~

~~3. All sport fish that are gigged or snagged in all waters open to gigging or snagging, except in the Tennessee River below Kentucky Lake Dam as established in paragraph (b) of this section, shall be immediately returned to the water, regardless of condition.~~

~~(b) The daily gigging and snagging limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8) fish, including paddlefish.~~

~~1. All rough fish, including paddlefish, shall be taken into immediate possession (no cull), except for shad or herring.~~

~~2. All sport fish that are gigged or snagged shall be immediately returned to the water, regardless of condition.~~

~~(c) The daily limit for fish in the Tennessee River below Kentucky Lake Dam that are open to only snagging shall be a maximum of eight (8) fish, including paddlefish.~~

~~1. All fish snagged, including paddlefish and sport fish, shall be taken into immediate possession (no cull), except for shad or herring.~~

~~2. Snagging shall cease if a daily limit of sport fish has been obtained, even if the creel limit for that sport fish is less than eight (8).~~

~~Section 7. Tickling and Noodling (Hand Grabbing). (1) The tickling and noodling (hand grabbing) season for rough fish shall be June 1 to August 31 during daylight hours.~~

~~(2) Tickling and noodling shall be permitted in all waters.~~

~~(3) The daily creel limit for tickling and noodling shall be fifteen (15) fish of which not more than five (5) shall be catfish (aggregate).~~

~~Section 8. Bow Fishing. (1) A person shall not take with archery equipment or a crossbow:~~

~~(a) Sport fish, as listed in 301 KAR 1:060, Section 1;~~

~~(b) More than five (5) catfish (aggregate); and~~

~~(c) More than two (2) paddlefish daily.~~

~~(2) All paddlefish and catfish shot with archery equipment or a crossbow shall be taken into immediate possession and counted toward the daily limit and shall not be released or culled.~~

~~(3) Bow fishing shall be open statewide, except:~~

~~a. In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek, and all tributaries within one-half (1/2) mile of their junction with the Cumberland River within this area; or~~

~~b. From a boat in restricted areas below navigation, power generating, or flood control dams.~~]

BENJY KINMAN, Deputy Commissioner
For JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: June 14, 2010
FILED WITH LRC: June 14, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 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 available unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by August 2, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking sport and rough fish by other than traditional fish methods.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate creel limits and possession limits of fish, to fix open seasons, to regulate the type of any device and methods used, and areas that are open to take fish. KRS 150.440 authorizes the Department to set seasons and creel limits for rough fish. KRS 150.470 authorizes the department to set size, season, and possession limits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will full fill the purposes of KRS 150.025, 150.440, and 150.470 by regulating the devices and methods used, areas open, and setting the seasons and limits that are to be used when taking fish with nontraditional fishing methods.

(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 limit harvest of blue and channel catfish using jugs, limb lines, and trot lines to 15 fish per day and only one over 25 inches in Taylorsville Lake.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to prevent over harvest of catfish in Taylorsville Lake. Blue catfish are easily targeted using these nontraditional fishing methods, and the catfish are currently harvested in higher numbers than we can stock. Our intent for stocking blue catfish in this reservoir was to establish a trophy fishery, but most of the fish are harvested before they can attain trophy sizes.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who fish using nontraditional methods in Taylorsville Lake in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who fish with nontraditional gear on Taylorsville Lake will be limited to harvest 15 catfish of which only one will be over 25 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 cost to the anglers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation, the anglers will eventually have the opportunity to catch larger catfish, and since the creel restriction will affect only a few anglers, more anglers will catch more catfish.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because all anglers are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of 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 to regulate creel limits and possession limits of fish, to fix open seasons, to regulate the type of any device and methods used, and areas that are open to take fish. KRS 150.470 authorizes the department to set size, season, and possession 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? No revenue will be generated by this administrative regulation during the first year.

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

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

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

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

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

GENERAL GOVERNMENT
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services
(Amendment)

302 KAR 29:010. Definitions for 302 KAR Chapter 29.

RELATES TO: KRS Chapter 217B
STATUTORY AUTHORITY: KRS 217B.050
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes the definitions which apply to 302 KAR Chapter 27, which implements the provisions of KRS Chapter 217B.

Section 1. Definitions. (1) "Accident" means an unexpected, undesirable event caused by the use or presence of a pesticide that adversely affects humans[~~man~~] or the environment.

(2) "Application" means placing of a pesticide for effect, including mixing and loading.

(3) "Authorized agent" means a manager or license holder that is actively engaged in the company.

(4) "Calibration" means adjustment of dispersal or output of application equipment to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.

(5) "Certification" or "certified" means recognition by the department that a person has demonstrated a minimum level of competence by examination and continuing education units and is authorized to use or supervise the use of pesticides in the area of his certification.

(6) "Commercial structural applicator" means a certified applicator that, for compensation, uses or supervises the use of any pesticide on any structure or substandard structure as defined in subsections (43)[~~(42)~~] and (44)[~~(43)~~] of this section.

(7) "Commercial structural fumigation license" means a license issued to a person allowing him to engage in the business of using poisonous gases to control pests in structures.

(8) "Common exposure route" means a probable manner, oral, dermal, or respiratory by which a pesticide may reach or enter an organism.

(9) "Compatibility" means chemical property of a pesticide that permits use with other chemicals without undesirable results being caused by the combination.

(10) "Competent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

(11) "Consumer disclosure" means a form, recommended by the Pest Control Advisory Board and approved by the Kentucky Department of Agriculture, which discloses to the consumer any wood destroying organism work to be performed by the commercial structural applicator.

(12) "Continuing education unit" means one (1) contact instructional hour of fifty (50) minutes.

(13) "Conventional termite treatment" means treatment with a registered liquid termiticide, used according to label instructions.

(14) "Environment" means water, air, land, plants, man and other animals living therein, and the interrelationships which exist among them.

(15) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

(16) "Graph" means a drawing of a structure that identifies the type of structure, provides an outline of the structure indicating approximate length and width and records current visible wood-destroying activity, any current visible wood-destroying damage, and treatment methods recommended.

(17) "Hazard" means a probability that a given pesticide will have an adverse effect on humans[~~man~~] or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

(18) "Health care center" means hospitals, nursing homes, convalescent centers, clinics, medical centers, or any facility that provides overnight stay for the purpose of health care.

(19) "Host" means any plant or animal on or in which another plant or animal lives for nourishment, development, or protection.

(20) "Inactive status" means holding in reserve a license held by a person not actively engaged in pesticide sales or application.

(21) "Integrated pest management program" means a strategy of controlling pests by combining biological, chemical, cultural, mechanical, and physical control methods in a way that minimizes economic, health, and environmental risks.

(22) "Kentucky State Plan" means the certification maintenance requirements and training courses approved by the department on recommendation of the Pest Control Advisory Board as set forth in 302 KAR 29:060.

(23) "Moisture control treatment" means a treatment applied under the structure which consists of a ventilation system, soil cover, liquid chemical treatment, or any combination of the above.

(24)[~~(23)~~] "Negligent manner" means failure to use reasonable

care in application or use of pesticides.

(25)[~~(24)~~] "New employee" means a person who has not been previously trained for thirty (30) days pursuant to KRS 217B.560.

(26)[~~(25)~~] "Noncommercial structural applicator" means a certified person who uses or supervises the use of any pesticide while making applications to any structure owned, occupied, or managed by him or his employer.

(27)[~~(26)~~] "Nontarget organism" means a plant or animal other than the one against which the pesticide is applied.

(28)[~~(27)~~] "Operator in charge" means a person certified to apply fumigants and charged with the duty of overseeing the fumigation operation.

(29)[~~(28)~~] "Partial termite treatment" means any treatment performed to selected areas of a structure.

(30)[~~(29)~~] "Practical knowledge" means the comprehension of and ability to identify and use pertinent facts in dealing with specific problems and situations.

(31)[~~(30)~~] "Protective equipment" means clothing or any other materials or devices that shield against unintentional exposure to pesticides.

(32)[~~(31)~~] "Registry" means a list, maintained by a school authority, of individuals that request advance notification of pesticide application.

(33)[~~(32)~~] "Regulated pest" means an organism for which restrictions, administrative regulations, or control procedures are in effect to protect the host, humans[~~man~~], or the environment.

(34)[~~(33)~~] "Remote pesticide sales agent" means an individual located outside of the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky, or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky.

(35)[~~(34)~~] "Resident pesticide sales agent" means an individual located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user.

(36)[~~(35)~~] "School" means an institution for teaching children such as, but not limited to, preschool, kindergarten, child day care centers, primary, and secondary schools.

(37)[~~(36)~~] "School authority" means superintendent, assistant superintendent, principal, assistant principal, headmaster, or a designee.

(38)[~~(37)~~] "Spot fumigation" means a fumigation operation performed for the control of structural pests or wood-destroying organisms in special rooms, vaults, chambers, tanks, railroad boxcars, barges, aircraft, or other enclosed areas of limited size, and which are segregated so that the fumigation crews and other persons remain outside and are not exposed to toxic concentrations of the fumigants used.

(39)[~~(38)~~] "Standard" means the level of knowledge and ability which must be demonstrated as a requirement for certification.

(40)[~~(39)~~] "State" means the Commonwealth of Kentucky.

(41)[~~(40)~~] "Structural pests" means those pests that have the potential to invade structures or may cause damage to structures.

(42)[~~(41)~~] "Structural pest control license" means a license issued to a person allowing him to engage in the business of structural pest control[~~controlling structural-invading pests in structures and outside areas~~].

(43)[~~(42)~~] "Structure" means any building regardless of its design or type of construction, public or private, vacant or occupied.

(44)[~~(43)~~] "Substandard structure" means those structures with less than fourteen (14) inches of clearance between the soil and the bottom of the floor joists in the crawl area, structures with wood-to-soil contact, or any other structures that cannot be treated according to label directions.

(45)[~~(44)~~] "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.

(46)[~~(45)~~] "Termite baiting system" means a termite monitoring and control program that uses bait stations, according to label directions, to deliver toxicant to termites.

(47)[~~(46)~~] "Termite pretreatment" means the application of an approved termiticide or baiting system, according to label directions, in new construction.

(48)[~~(47)~~] "Toxicity" means the property of a pesticide that causes any adverse physiological effects to a living organism.

(49)[~~(48)~~] "Unauthorized personnel" means any individual or individuals not belonging to, or a part of, the fumigating crew performing a fumigation operation.[~~Section 2. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.~~]

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: June 15, 2010

FILED WITH LRC: June 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10 am at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Nicole Liberto, Deputy General Counsel, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole Liberto, Deputy General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation modernizes terms used in definitions for the chapter and adds one additional definition.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by clearly defining what regulatory terms mean.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by clearly defining what regulatory terms mean. These defined terms are needed to carry out the purpose and intent of KRS Chapter 217B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by clearly defining what regulatory terms mean. With terms clearly defined the enforcement of the statutes is simplified for the Department as the stakeholders will have clear guidance as to the meaning of industry terms.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation modernizes terms and adds one additional term to the definition list. This new term describes and names the amended requirements in 302 KAR 29:060 for maintenance of certification.

(b) The necessity of the amendment to the administrative regulation: This amendment is necessary to modernize continuing education unit requirements so that there is no longer an option to simply re-test, but rather the requirement to attend courses to be familiar with changes in the industry.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by clearly defining regulatory terms. These defined terms are needed to carry out the purpose and intent of KRS Chapter 217B.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by clearly defining regulatory terms.

With the terms clearly defined, the enforcement of the statutes is simplified for the Department as the stakeholders will have clear guidance as to the meaning of industry terms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently 320 Commercial License Pest Control companies operate within the Commonwealth. Approximately 2,430 persons currently hold certifications in structural pest control.

(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 person seeking to maintain certification will be required to maintain their certification by attending continuing education classes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that if any costs will be incurred for the person seeking to maintain certification, that it would be less than Two Hundred Dollars ($200). However, the KDA believes that most certified persons will reduce current costs due to the changes in requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The person seeking to maintain certification through attending the continuing education classes will retain their certification in the field, and will operate in a safer and more efficient manner.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal EPA funds 51% of the program, and pesticide product registration fees fund 49%.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been establish directly or indirectly through this amended regulation.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services
(Amendment)

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

RELATES TO: KRS 217B.190, 217B.515, 217B.520, 217B.525, 217B.545

STATUTORY AUTHORITY: KRS 217B.050, 217B.530

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

Section 1. Applicability. A person shall not engage in commercial structural pest control or fumigation without first obtaining a license from the department. A person may apply for a license in one (1) or more of the following categories:

(1) Commercial structural pest control applicator;

(2) Commercial structural pest control manager;

(3) Commercial structural fumigation applicator;

(4) Commercial structural fumigation manager; or

(5) Pesticide sales agent.

Section 2. License Application. (1) All applicants for applicator or manager licenses shall provide the following:

(a) A completed "Commercial Structural Pest Control Examination Application";

(b) A statement from a statewide law enforcement agency that the applicant has never been convicted of fraud, misrepresentation, or a felony;

(c) College transcripts if applicable; and

(d) Written verification of pesticide work experience, pursuant to KRS 217B.520.

(2) All applications for applicator or manager examinations shall be sworn to and notarized.

(3) Pursuant to KRS 217B.525(1), all applications for applicator or manager licenses shall be postmarked thirty (30) days prior to the next scheduled testing date. Any application received after the thirty (30) day deadline shall be returned.

(4) Any applicant failing to submit a complete application thirty (30) days prior to the scheduled testing date shall not be allowed to test.

(5) Any false or misleading statements made in a license application shall be grounds to deny or revoke the license.

(6) The application of any applicant convicted of a felony shall require approval by the board.

(7) The manager's license examinations shall be given the second Tuesday of each month at a location specified by the department. If the second Tuesday falls on a holiday, the examination shall be given on the following Tuesday.

(8) The manager's license examination shall be timed and shall be completed within two (2) hours.

(9) An applicant for an applicator's or manager's license shall pass both parts of the examination in a single testing session pursuant to KRS 217B.530(7).

Section 3. License Renewal. (1) Each license shall expire on June 30 of each year.

(2) Failure to submit, by July 1 of each year, a completed "Structural Pest Control Renewal" form with a fee of $100 for each

place of business maintained in Kentucky, shall result in the license holder having his license suspended until the renewal registration has been received and the fee and any associated fines are paid.

(3)[~~lapse of the license.~~

~~(3) Any license holder who fails to submit a completed renewal registration form and the required fee by July 1 of each year, or whose license has been suspended or revoked, shall be required to take and pass a manager or applicator licensing examination before a new license is issued.~~

~~(4)~~] At the time of license renewal, each company shall submit to the department a list with the following information on each employee:

(a) Name, address, and home telephone number;

(b) Social Security number; and

(c) Job title.

(4)[~~(5)~~] Within thirty (30) days of the addition or termination of an employee, the company shall submit to the department the information required in subsection (4) of this section for each new or terminated employee.

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

Section 5. Treatment for Wood-destroying Organisms. Unless the structure is substandard, the following standards shall apply:

(1) Treatment measures taken for the prevention or control of wood-destroying organisms shall be based upon an inspection of the structure.

(2) Termite treatment measures. The following standards shall apply to the treatment of all structures for the control or prevention of subterranean termite infestations.

(a) The selection and use of soil-applied liquid termiticides, termite bait systems, wood treatments, or any other product used for control of wood-destroying organisms shall be in accordance with directions on the product label.

1. Loose cellulose debris that can be raked from beneath structures shall be removed.

2. Except for a component of a termite baiting system that is affixed to termite tubes, all accessible termite tubes shall be removed.

(b) Termite pretreatments shall be carried out in accordance with label directions of the product used and shall not be applied at less than label rates.

(c) Any alternative termite treatment measures or new technology in termite control with less than five (5) years efficacy data shall receive prior written approval from the department before the measures and technology may be registered and used. All alternative termite treatment measures or new technology in termite treatments shall be applied in accordance with label directions.

(3) Powderpost beetle and old house borer treatment measures:

(a) Treatment for the control of powderpost beetle or old house borer infestations may be performed by spraying or painting infested and adjacent areas with a pesticide labeled for their control; and

(b) Fumigation by licensed fumigators may be used to control powderpost beetle or old house borer infestations if other control measures have failed or are inappropriate.

(4) Requirements for prevention and control of wood-destroying fungi. The following shall be the minimum requirements for control of wood-destroying fungi in crawl space areas or other areas of buildings after the buildings have been constructed:

(a) The applicator shall determine the moisture content of joists, sills, and subfloor in the building. If excess dampness from the soil under a building contributes to moisture readings above twenty (20) percent, the applicator shall:

1. Install a vapor barrier over approximately seventy (70) percent of the soil;

2. Install additional ventilation so there is at least one (1) square foot of vent space per 150 square feet of crawl space area without a vapor barrier;

3. Install vents to give cross ventilation with a vapor barrier;

4. Improve drainage;

5. Waterproof the foundation; or

6. Perform any combination of the items specified in subparagraphs 1 to 5 of this paragraph.

(b) The application of fungicides under the structure may be used in the control of existing decay problems under the following circumstances:

1. Spot treatment may be performed for areas with twenty (20) percent or above moisture readings.

2. Complete liquid treatment may only be performed in conjunction with paragraph (a) of this subsection if moisture readings are above twenty (20) percent in four (4) separate areas of a structure. a. The separate areas of a structure shall be:

(i) Left front;

(ii) Right front;

(iii) Left rear;

(iv) Right rear;

(v) Left center; and

(vi) Right center.

b. Moisture readings shall be recorded on a graph at the time of original sale of treatment.

c. If a structure qualifies with four (4) moisture readings, a moisture control treatment shall be performed.

Section 6. Wood-destroying Organism Reports. (1) A person holding a commercial structural pest control applicator's license shall submit to the department a monthly report of all work done for control or prevention of wood-destroying organisms. Each office or branch office shall file a separate report.

(2) Reports shall be made on the "Monthly Report of Wood-Destroying Organism Treatments" form and received by the department no later than the 15th of the month following treatment.

(3) All reports shall be signed by the licensed applicator or authorized agent for that company.

(4) Upon performance of treatment for control or prevention of wood-destroying organisms, a contract shall be made between the company and the property owner. This shall be, at minimum, a duplicate contract, one (1) copy being issued to the property owner and one (1) copy retained by the company.

Section 7. Consumer Disclosure. All contracts issued except those for preconstruction treatments shall be accompanied by a consumer disclosure signed by the consumer or an individual authorized by the consumer and a graph. If a signature cannot be obtained a detailed explanation for the absence of the signature must be included on the form.

Section 8. Inspections by the Department. (1) The commissioner or his authorized representative may examine properties treated for the purpose of determining compliance with the treatment standards established in Section 5 of this administrative regulation.

2. The pest control operator shall not accompany the inspector on the initial inspection unless requested by the department.

3. If violations are found, the license holder shall be notified and given a reasonable length of time in which to abate the violations.

4. If the license holder neglects or refuses to abate the violations, the license shall be suspended, as provided by KRS 217B.545, except for good cause shown.

(5) If a license is suspended, the license holder shall:

(a) Retreat all properties on which a violation has been found;

(b) not otherwise service any current contracts or solicit any new business; and

(c) notify the department of the dates of all reexaminations and retreatments.

(6) When all properties previously reported in an unsatisfactory condition have been reexamined and retreated, the department shall make the reinspections at its earliest convenience.

(7) If the department, on reinspection, finds all the properties in satisfactory condition, the suspension shall be removed. Otherwise, the license shall be permanently revoked.

Section 9. Rodent Control. Since most rodenticides are toxic to

humans and domestic animals, care shall be exercised and precautionary steps taken to avoid accidental poisoning of human beings and domestic animals. Rodenticides shall be used only according to label directions.

Section 10. Fumigation. (1) Fumigation crews. For purposes of safety, at least two (2) individuals shall compose a crew for the release of any fumigant or fumigants operation shall not be conducted unless at least two (2) individuals work jointly and concurrently in the release of a fumigant or fumigants. This subsection shall not apply to spot fumigation.

(2) Official notice of fumigation.

(a) Before performing general fumigation in a structure or enclosed space, a license or certification holder shall notify in writing the fire department and the police department having jurisdiction over the location where the fumigation operation is to be performed.

(b 1. Except as provided in subparagraph 2 of this paragraph, the written notification shall be given to each fire department and police department at least three (3) hours prior to the time stated in the notice for the release of the fumigant.

2. Notification shall be provided in advance of the fumigating operation, without the time limit established by subparagraph 1 of this paragraph, for fumigation of vessels, aircraft, boxcars, trucks, or common carriers.

(c) The notice shall give the following information:

1. Location of structure or enclosed space to be fumigated as well as its character and use;

2. The fumigant to be used;

3. The date and time of release of fumigant and approximate exposure period; and

4. The name and day and night telephone numbers of the operator in charge.

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

(4) Structures to be vacant.

(a) Human beings or domestic animals shall not occupy the structure to be fumigated, or any part or parts thereof, during the period of fumigation. In addition, structures or enclosed spaces which are physically joined to or in contact with the structure to be fumigated shall not be occupied by human beings or domestic animals during the period of fumigation.

(b) The operator in charge shall make a careful examination of all parts of the structure to be fumigated and structures or enclosed spaces physically joined to or in contact with the structure, to verify that no human beings or domestic animals are remaining in the structure and that all necessary precautions have been taken to safeguard the lives and health of all persons.

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

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

(7) Danger signs.

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

(Skull and Crossbones)	Danger Fumigation with (Name of Fumigant) Deadly Poison All persons are warned to keep away	(Skull and Crossbones)

Name of Fumigator:
Address:
Telephone:
Operator in Charge:
Day Phone:
Night Phone:

(b) The signs shall be printed in indelible red ink or insoluble paint on a white background. The words "danger" and "deadly poison" shall be in block letters two (2) inches high and all other letters shall be in proportion.

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

(a) That all preparations have been completed;

(b) That no human beings or domestic animals are present within the structure or enclosed space to be fumigated, or in any adjacent structures or enclosed spaces that were to be vacated because of danger from the fumigation operation;

(c) That no open fires or open flames, pilot lights or oil lamps are burning;

(d) That all personnel engaged in the fumigation operation are outside the structure or enclosed space to be fumigated unless proper application of the fumigant requires personnel to be within the enclosed space at the time of application; and

(e) That all doors, windows, and all other means of access have been locked, barred, or guarded. All doors or other entrances which can be opened from the outside shall be locked.

(9) Guards and watchmen.

(a) During the period of fumigation, and until the structure has been ventilated and declared safe, at least one (1) capable, alert watchman or guard, shall remain on duty at the structure or enclosed space being fumigated. One (1) guard or watchman shall be considered sufficient for each fumigation operation unless, in the judgment of the operator in charge, the conditions and circumstances necessitate additional guards or watchmen.

(b) The guard or watchman shall prevent the entrance of unauthorized personnel into the structure or enclosed space during the exposure period and while the structure or enclosed space is being ventilated after the exposure period.

(c) Spot fumigation shall not require a guard or watchman, unless deemed necessary in the judgment of the operator in charge. (d) If a warning agent is used, the requirements establised in this subsection shall not apply unless specified by the label.

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

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

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

(a) Aerosol dispersions; and

(b) Any equipment or device which produces a fog, smoke, or mist.

Section 11. Structural Pest Control and Fumigation Licenses. (1) A person holding a general pest and wood-destroying organism or fumigation license may continue to do business in those categories of pest control for which the person is licensed under KRS 217B.515(1)(b). A general pest and wood-destroying organism or fumigation certification shall not be a manager's or applicator's license and shall not entitle the holder to engage in business in all the categories that a manager or applicator may engage.

(2) Commercial structural pest control or fumigation licenses shall be renewed by June 30 of each year and shall be subject to all the terms and conditions of other licenses issued under this administrative regulation. These licenses may be modified, suspended, or revoked for the same reasons, and using the same procedures, that a manager's or applicator's license may be modified, suspended, or revoked. These license holders shall meet the application standards and obey the requirements for contracting, recordkeeping, and reporting, established by KRS 217B.150 and by 302 KAR 29:020.

(3) A person holding a general pest and wood-destroying or-

ganism or fumigation license shall be, by reason of KRS 217B.180(3), certified to purchase or use restricted-use pesticides. This shall not relieve them from obtaining certification under the federal law as contained in the Federal Insecticides, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 11. The certification of persons certified under KRS 217B.180(3) may be modified, suspended, or revoked pursuant to 302 KAR 29:020. To maintain certification, persons certified pursuant to KRS 217B.180(3) shall meet the requirements of 302 KAR 29:060.

Section 12. Pesticide Application in Schools. Each school district shall implement an integrated pest management program with a primary goal of controlling dangerous and destructive pests with the judicious use of pesticides. An integrated pest management program shall include the items specified in this section:

(1) Advance notification of pesticide use.

(a) If a pesticide is to be applied in or around a school, an advance notification of pesticide use shall be given or sent by the school at least twenty-four (24) hours prior to the pesticide application to all staff members, health professionals assigned to provide services at the school and parents or guardians of students enrolled in the school as determined by the contact information maintained on file. Notice shall not be required if:

1. A pesticide is to be applied at a time the school is not in session under the calendar set by the school board; and

2. Persons other than the applicators and the minimum number of school staff necessary to allow the applications are not scheduled to be in the building during the application and for at least twenty-four (24) hours after the application.

(b) A master copy of the notification shall be maintained by the school in a file marked IPM for twenty four months after the notice is issued and shall be subject to inspection upon request by Division of Environmental Services personnel.

(2) The notification shall include the following:

(a) The date of possible pesticide application;

(b) A description of the general location of the pesticide application;

(c) description of pests treated, the brand name of the pesticides applied, including the list of active ingredients, and the pesticide application method; and

(d) A telephone number that parents and staff can use to contact the school for more information.

(3) If special circumstances arise that prevent advance notice from being provide as required, such as the emergency application of pesticides to control organisms that pose an immediate health threat, the school shall provide the notice as soon as possible. The notice shall explain the reasons why advance notice was not provided and shall also include the information required in subsection 2(a) to (d) of this section.

(4) The certified applicator shall only be responsible to furnish to the school the information needed by the school to comply with subsections (2)(a) to (c) of this section:

(a) At least thirty-six (36) hours prior to the application of the pesticide, if the school notification is provided as required by subsection (1)(a) of this section; or

(b) As early as possible, if the school notification is provided as required by subsection (3) of this section;

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

(6) Exemptions. This administrative regulation shall not apply to application of the following types of pesticides:

(a) Germicides, disinfectants, bactericides, sanitizing agents, water purifiers, and swimming pool chemicals used in normal cleaning activities;

(b) Personal insect repellents;

(c) Human or animal ectoparasite control products administered by qualified health professionals or veterinarians; and

(d) Manufactured paste or gel bait insecticides placed in areas where humans or pets do not have reasonable access to the bait; or

(e) Paraffin-based rodent control products placed in industry identified tamper-resistant bait stations.

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

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commercial Structural Pest Control Examination Application", 2002;

(b) "Monthly Report of Wood-Destroying Organism Treatments" form, 11/99; and

(c) "Structural Pest Control Renewal Form", December 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Environmental Services, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: June 15, 2010

FILED WITH LRC: June 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10 am at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Nicole Liberto, Deputy General Counsel, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole Liberto, Deputy General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation changes treatment of persons who fail to pay the license renewal fee, and changes requirements in the consumer disclosure form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by modifying the treatment of persons who do not pay a license renewal fee by means of not allowing those people to apply pesticides until they do so. Additionally, this amendment modifies the consumer disclosure section by requiring the pesticide applicator to have the consumer sign the form, or to provide an explanation as to why the consumer who hired the company did not sign the disclosure form.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by

allowing the KDA to suspend a person from application activities until the person pays the license renewal fee instead of requiring the person to re-test. This change will lower the number of tests the KDA would be required to give and grade yearly.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation changes treatment of persons who fail to pay the license renewal fee, and changes requirements on the consumer disclosure form.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by modifying the treatment of persons who do not pay a license renewal fee by means of not allowing those people to apply pesticides until they do so. Additionally, this amendment modifies the consumer disclosure section to require the pesticide applicator to have the consumer sign the disclosure form, or to provide an explanation as to why the consumer who hired the company did not sign the disclosure form.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by allowing the KDA to suspend a person from application activities until the person pays the license renewal fee instead of requiring the person to re-test. This change will lower the number of tests the KDA would be required to give and grade yearly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently 320 Commercial License Pest Control companies operate in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals will be required to obtain the signature of customers on the disclosure sheet in addition to the current requirement to timely pay the renewal fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated individual will benefit from this amendment by having a more informed client. This will reduce confusion for the consumer as they will be signing an agreement which details exactly what services will be performed.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal EPA funds 51% of the program, and pesticide product registration fees fund 49%.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been establish directly or indirectly through this amended regulation.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services
(Amendment)

302 KAR 29:060. Certification.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Certification. Unless otherwise specified, the certifications provided for in this chapter shall be valid for three (3) years and must be renewed and maintained in accordance with Section 7 of this administrative regulation.

Section 2. Types of Certification. (1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall cover all persons using or supervising the use of pesticides for structural pests only, in, on, or around food-handling establishments, human dwellings, educational facilities, health care centers, industrial establishments, including warehouses and grain elevators and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products. Industrial, institutional, structural, and health-related pest control certification shall be divided into the following subcategories:

(a) Structural pest control certification shall cover the use of pesticides in the control of general pests and wood-destroying organisms by all means other than fumigation. Persons certified under this section shall be exempt from the certification requirements of 302 KAR Chapters 27 and 28 if using or supervising the use of pesticides for the control of structural-invading pests in areas adjacent to or outside any structure being treated by the person pursuant to the provisions of 302 KAR Chapter 29.

(b) Integrated pest management certification shall cover an environmentally-sound approach to pest management in schools and health care facilities with the goal of the judicious use of pesti-

cides.

(c) Structural fumigation certification shall cover the use of pesticides in the form of poisonous gases.

(2) Category 8. Public health pest control. This category shall include state, federal, or other governmental employees using or supervising the use of pesticides in management and control of pests in public health programs.

(3) Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this administrative regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 27 and 28. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification if the person selling or distributing pesticides is licensed as a pesticide sales agent.

Section 3.[~~2.~~] General Requirements. To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in this administrative regulation [~~and KRS 217B.530~~]. The examination and testing shall include the general standards of competency in Section 4 of this administrative regulation[~~applicable to all categories~~] and the specific[~~additional~~] standards of competency in Section 5 of this administrative regulation[~~specifically identified~~] for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an examination, a person shall have ninety (90) days from the date of testing to submit a completed "Structural Pest Control License Form" specifying the category or categories in which a license is requested. After ninety (90) days have expired, a person shall retake the exam before activation of a license may occur.

Section 4.[~~3.~~] General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

(1) Label and labeling comprehension:

(a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;

(b) Classification of the product, general or restricted; and

(c) Necessity for use consistent with the labeling.

(2) Safety factors, including:

(a) Pesticide toxicity, hazard to humans[~~man~~], and common exposure routes;

(b) Common types and causes of pesticide accidents;

(c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;

(d) Symptoms of pesticide poisoning;

(e) First aid and other procedures to be followed if a pesticide accident occurs;

(f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers; and

(g) The proper selection and use of personal protective equipment for the handling and application of pesticides;

(3) The potential environmental consequences of the use and misuse of pesticides as may be influenced by factors such as:

(a) Weather and other climatic conditions;

(b) Types of terrain, soil, or other substrata;

(c) Presence of fish, wildlife, and other nontarget organisms; and

(d) Drainage patterns;

(4) Pest identification, including consideration of the following factors:

(a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and

(b) Pest maturation and development as it may relate to the problem of identification and control.

(5) Pesticides, including consideration of the following factors:

(a) Types of pesticides;

(b) Types of pesticide formulations;

(c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;

(d) Hazards and residues associated with use;

(e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and

(f) Dilution procedures.

(6) Equipment, including consideration of the following factors:

(a) Types of pesticide application equipment and advantages and limitations of each; and

(b) Uses, maintenance, and calibration of equipment.

(7) Application techniques; factors including:

(a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;

(b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(c) Prevention of drift and pesticide loss into the environment.

(8) Laws and regulations. Knowledge of pertinent aspects of the Federal Environmental Pesticides Control Act, 7 U.S.C. 136, and KRS Chapter 217B.

Section 5.[~~4.~~] Specific Standards of Competency. In addition to meeting the requirements of Sections 3[~~2~~] and 4[~~3~~] of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:

(1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall be subdivided as follows:

(a) Structural pest control [~~certification~~]. Persons requesting certification in this subcategory shall demonstrate practical knowledge of a wide variety of pests including general pests and wood-destroying organisms. This practical knowledge shall include their life cycles, types of formulations appropriate for their control, minimum standards of application, and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including babies, pregnant women, and elderly people, is frequently a potential problem, applicants shall demonstrate practical knowledge of the specific factors which may lead to a hazardous condition. Because school and health-related pest control may involve outdoor applications, persons shall also demonstrate practical knowledge of environmental conditions.

(b) Integrated pest management. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of an integrated pest management program to determine if and when a treatment is needed. Components of an integrated pest management program may include education, proper waste management, structural repair, maintenance, biological and mechanical control techniques, and pesticide application. A prerequisite for integrated pest management certification shall be 7(a) certification. Regardless of the original issue date of this 7(b) integrated pest management certification, its expiration and renewal dates shall be the same as the corresponding 7(a) certification.

(c) Structural fumigation [~~certification~~]. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of those pests for which treatment by fumigation is an appropriate control technique. This practical knowledge shall include their life cycles, fumigants appropriate for their control, and alternative control techniques. Because of the potential dangers inherent in the use of fumigant gases, the applicant shall demonstrate knowledge of the dangers involved and the safety precautions established by these administrative regulations and by good operating practice. For those persons holding both a category 7(a) and 7(c) certification, the expiration and renewal dates of the 7(c) certification shall be the same as the corresponding 7(a) certification regardless of its original issue date.

(2) Category 8. Public health. Each person with certification in category 8 in effect on the effective date of this administrative regulation shall be granted certification in category 7(a) and category 7(b) with a expiration date of December 31, 2012[~~Persons requesting public health certification shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences pesticide application programs. A wide variety of pests are involved and they shall be known and recognized; and appropriate life cycles and habitats shall be understood as a basis for control strategy. These applicants shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They shall also have practical knowledge of the importance and employment of such nonchemical control methods such as sanitation, waste disposal and drainage~~].

(3) Category 12. Pesticide sales agent. Persons desiring certification in this category shall demonstrate practical knowledge of pesticide labels and label comprehension including environmental hazards, rates of application, proper application techniques, storage, shipping, handling, worker protection safety issues, and the different types of pesticides.

Section 6.[~~5.~~] License Examination. Structural. The examinations administered by the department pursuant to KRS 217B.530 and this administrative regulation for licensees to do business as structural pest control applicators, structural pest control managers, structural fumigation applicators, and structural fumigation managers shall contain all the requirements for certification to apply pesticides under this administrative regulation. If a person obtains a license to do business in one (1) or more of the above categories, that person shall be certified to purchase, use, or apply pesticides in the appropriate subcategory of industrial, institutional, structural, or health-related pest control.

Section 7.[~~6.~~] Certification Maintenance. To maintain a category 7(a), or category 12 certification, each person certified under this administrative regulation shall in any three (3) year period, attend at least twelve (12) continuing education units of training [~~for a single category on the effective date of this administrative regulation~~], approved by the department, in the use and application of pesticides. To maintain a category 7(b) certification, an additional three (3) continuing education units of training shall be required. And, to maintain a category 7(c) certification, each person certified in this category shall in any three (3) year period, attend at least nine (9) continuing education units and three (3) category specific continuing education units of training. For those persons holding a category 7(a) certification who are also seeking to maintain a category 7(c) certification, an additional three (3) category specific continuing education units shall be required[~~The training shall consist of nine (9) continuing education units of training based on Section 3 of this administrative regulation, and three (3) continuing education units of training based on Section 4 of this administrative regulation~~]. All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, 2012[~~2005~~]. [~~For each additional category in addition to the single category held by the person, an additional three (3) continuing education units based on Section 4 of this administrative regulation, shall be required. Nine (9) continuing education units of training based on Section 3 of this administrative regulation, shall be required to maintain certification regardless of how many additional categories a person may hold.~~] Credit shall be given in full continuing education unit increments only. All persons holding certification in any category shall begin a new three (3) year training period beginning January 1 after the effective date of this administrative regulation.

Section 8.[~~7.~~] Credentials. (1) If a person meets all the requirements to obtain a license to do business under KRS 217B.500 to 217B.585 and this administrative regulation, the department shall issue a document signifying that he is licensed to do business in the category for which he qualifies.

(a) Inactive status. If an applicator or operator for any reason changes status and is no longer employed but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall be required to maintain certification and pay the annual renewal fee. The licensee shall not be permitted to perform any type of regulated activity until the license is reactivated.

(b) Employee commercial license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any active commercial pesticide license or active certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any commercial pesticide license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties.

(2) If a person qualifies for certification incident to qualification for a license to do business, the department shall issue him one (1) document which shall be the license to do business and shall contain the certification category number.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a certification to any person who holds a valid certification in another state if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

(4) A certification may be granted, denied, suspended, or revoked independent of the grant, denial, suspension, or revocation of any license to do business. In a like manner, any license to do business may be suspended or revoked independent of the grant, denial, suspension, or revocation of any certification.[~~Section 8. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.~~]

Section 9. Incorporation by Reference. (1) "Structural Pest Control License Form", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: June 15, 2010

FILED WITH LRC: June 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10 am at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Nicole Liberto, Deputy General Counsel, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole Liberto, Deputy General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clarifies the three (3) year validation and renewal period for certification.

(b) The necessity of this administrative regulation: This admin-

istrative regulation is necessary to make the issue date and the renewal date for certification periods the same.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by clarifying the three (3) year validation and renewal period for certification, and makes the issue date and the renewal date for certification periods the same.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to make the issue date and the renewal date for certification periods the same. This rule will streamline the renewal process and be less confusing for regulated individuals.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation clarifies the three (3) year validation and renewal period for certification.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to make the issue date and the renewal date for certification periods the same.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by clarifying the three (3) year validation and renewal period for certification, and making the issue date and the renewal date for certification periods the same.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation is necessary to make the issue date and the renewal date for certification periods the same. This rule will streamline the renewal process and be less confusing for the regulated individuals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently 320 Commercial License Pest Control companies operate within the Commonwealth. Approximately 2,430 persons currently hold certifications in structural pest control.

(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 individuals will not need to take any action to comply with these changes. This regulation only effects the renewal dates and period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entity individual will benefit from easy to understand changes that will result in the issuance date and the renewal date being the same.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal EPA funds 51% of the program, and pesticide product registration fees fund 49%.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been establish directly or indirectly through this amended regulation.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Parks
(Amendment)

304 KAR 1:040. Campgrounds.

RELATES TO: KRS 148.021, 148.029, 148.051, 148.056, 148.991

STATUTORY AUTHORITY: KRS 148.021(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.021(8) authorizes the Commissioner of Parks to promulgate administrative regulations relating to the operation of state park campgrounds. This administrative regulation establishes requirements for the orderly operation of state park campgrounds.

Section 1. At all state park campgrounds the following rules shall be posted and observed:

(1) Camping, unless otherwise authorized by the park manager due to a special event creating an overflow, shall be restricted to the campground.

(2) A tent, a camping vehicle, a recreational vehicle, camping equipment, or other personal property shall not be left unattended longer than twenty-four (24) consecutive hours without written permission from the park manager.

(b) Written permission pursuant to paragraph (a) of this subsection shall be based upon the best interests of the park.

(3)(a) Pets shall:

1. Be kept on a leash or otherwise restrained at all times;

2. Have current inoculations for rabies as prescribed by the campers' state of residence; and

3. Not be tied to trees or shrubs.

(b) Campers shall clean up after their pets.

(c) Campers unable to control their pets may be asked to leave the campground.

(4)(a) Sewage or gray water from tents or recreational vehicles shall not be disposed of on the premises of the campground except at a sewage disposal site.

(b) Dishes, pots, pans, and silverware shall not be washed at spigots or in bathhouses.

(c) Vehicles or equipment shall not be washed within the campground.

(5) Quiet time begins at 11 p.m. Campers shall not have visitors after 11 p.m.

(6) Campers shall not:

(a) Hang lanterns on trees or shrubs;

(b) Drive an object into a tree, shrub, sign, building, or other object or structure in the campground; or

(c) Trench or dig in the campground.

(7)(a) Licensed motorized vehicles such as motorbikes, motorcycles and[,] motor scooters[, and off-road vehicles in the campground] shall be restricted to regular roadways for use in entering and exiting the campground only.

(b) Campers and visitors shall not [joy] ride four (4) wheelers, golf carts, mopeds, "off-road" vehicles or similar unlicensed motorized vehicles within the campground.

(c) [Drivers shall be at least sixteen (16) years of age and have a valid driver's license.

(d) Vehicles shall be properly muffle red and shall stay on paved roads.

(e)] An exception shall be made for the use of an unlicensed[a] motorized vehicle pursuant to paragraph (b) of this subsection by a mobility-impaired person [with a disability] who:

1 Is using an unlicensed[a] motorized vehicle for travel to or from campground facilities; and

2. Presents[Has] proof of impairment[disability] such as an appropriate identification card, doctor's statement, or vehicle license plate to the campground attendant prior to entry into the campground.

(d) Drivers of licensed and unlicensed motorized vehicles pursuant to paragraphs (a) and (c) of this subsection shall be at least sixteen (16) years of age and have a valid driver's license.

(e) Vehicles operated pursuant to paragraphs (a) and (c) of this subsection shall be properly mufflered and shall stay on paved roads.

(8)(a) Campsites may be reserved by telephone or via the Internet.

(b) Any campsites not reserved shall be available on a first-come, first-served basis.

(c) Check-in time is 2 p.m., and check-out time is 1 p.m.

(9)(a) There shall be a fourteen (14) day maximum stay unless granted a waiver by the park manager for good cause due to an emergency or business necessity.

(b) A camper may be asked to move to facilitate maintenance on the site.

(c) Campers shall not homestead.

(10)(a) A camper shall register at the entrance gate or designated area and shall receive a campsite assignment from the gate attendant, which shall be noted on a camping permit.

(b) A camper shall not change a campsite assignment, unless permission to move is granted by the gate attendant.

(c) If campers are permitted to select a site of their choice, they shall return immediately to the gate attendant and identify the chosen site.

(11) Central service buildings and other facilities in the camping area shall be for campers and their guests only. Anyone other than registered campers or guests of registered campers shall not picnic, sightsee, or have reunions in the campground.

(12) Fires shall be restricted to fire rings in designated areas only and shall be attended at all times.

(13)(a) Vehicles shall be parked in campsite spaces and parking lots and shall display a "car pass" or "visitor pass".

(b) Vehicles shall not block adjacent sites or roadways.

(14) Tables shall not be moved from site to site.

(15)(a) Two (2) groups or parties may share one (1) campsite.

(b) If two (2) groups or parties agree to share one (1) campsite, each shall be issued a camping permit, if two (2) tents, campers, or recreational vehicles are used.

(16)(a) Campers shall keep their sites clean and dispense of refuse in the receptacles provided.

(b) Campers may camp on grass only with prior permission of the gate attendant or park manager.

(17) Alcoholic beverages shall not be publicly displayed.

(18) Fireworks shall not be allowed at the campground.

(19) Campers shall:

(a) Report loss, theft, accident, or disturbance to gate attendant; and

(b) Turn in all found property to gate attendant.

(20)(a) A camper shall not deface or damage park property.

(b) Failure to comply with paragraph (a) of this subsection may result in arrest, fine, or eviction from the park property.

(21) All visitors shall sign in and out, display a visitor pass, and obey all campground rules.

(22) More than two (2) visitor passes shall not be issued per site.

(23)(a) A camper or a camper's guest shall not engage in fighting; threatening or abusive language; lewd acts, or conduct that causes public inconvenience, annoyance, alarm, unreasonable noise, or is disturbing to campground patrons.

(b) Failure to comply with paragraph (a) of this subsection may result in arrest, fine, or eviction from the park property.

Section 2. Sanctions. The park manager reserves the right to remove any camper or camper's guest from the premises for violation of this administrative regulation.

GERRY VAN DER MEER, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: April 15, 2010

FILED WITH LRC: June 14, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2010 at 9 am at the Kentucky Department of Parks in the 10th Floor Conference Room, 500 Mero Street, CPT 10th Floor, Frankfort, Kentucky 40601. 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 August 2, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Melany Crawford, 500 Mero Street, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, phone (502) 564-4270, fax (502) 564-1079.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melany Crawford

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies that non-licensed motorized vehicles are not permitted in Parks' campgrounds except for use by the mobility impaired.

(b) The necessity of this administrative regulation: This regulation is necessary in order to prevent unnecessary traffic and disturbance in Parks' campgrounds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.021(8) authorizes the commissioner to promulgate regulations to effectively operate state parks. Campgrounds are an integral part of the parks' system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation makes it clear what vehicles may be used in parks' campgrounds and by whom.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that nonlicensed motorized vehicles are not permitted in parks' campgrounds except for use by the mobility impaired. This amendment further requires that any person using a motorized vehicle must have a valid driver's license and must stay on a paved road.

(b) The necessity of the amendment to this administrative regulation: Prior to amendment, the regulation did not detail the process for mobility impaired individuals to gain permission to use

nonlicensed motorized vehicles and did not specifically restrict use of motorized vehicles to licensed drivers on paved roads.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 148.021(8) authorizes the Commissioner of Parks to promulgate administrative regulations relating to the operation of state park campground. This amendment increases the ability of parks to maintain order within its campgrounds.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will facilitate park rangers' ability to determine who is legally using such vehicles in campgrounds and assist the Department of parks in keeping order in the campgrounds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All visitors to the parks' campgrounds who wish to use a nonlicensed motorized vehicle will be affected. No state or local governments will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Only mobility impaired persons may use non-licensed motorized vehicles in campgrounds. They must present proof of their impairment upon arrival at the campground.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No fees are involved.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Mobility impaired persons will be permitted to use non-licensed motorized vehicles in the campgrounds and will have a mechanism to gain permission to do so.

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

(a) Initially: No additional cost is anticipated.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None

(9) TIERING: Is tiering applied? No. This regulation applies equally to all persons entering campgrounds controlled by the Kentucky Department of Parks.

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 Parks 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 148.021, 148.991

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No additional cost is 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: This regulation will have a negligible impact on staff of the Kentucky Department of Parks and patrons to the parks' campgrounds.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:100. Design, construction and approval of facilities.

RELATES TO: KRS 151.634, 224.10-110, 224.60-100[~~Chapter 224~~], 40 C.F.R. 141.5, 141.110-111[~~Part 141 (1995)~~]

STATUTORY AUTHORITY: KRS 224.10-100(2), 224.10-110, 40 C.F.R. 141.5, 141.110-111, 42 U.S.C. 300j-26[~~Part 141 (1995), 42 U.S.C. A 300f, 300g, 300j~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 requires[~~directs~~] the cabinet to enforce administrative regulations promulgated[~~adopted~~] by the secretary for the regulation and control of the purification of water for public and semipublic use. [~~The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility.~~] This administrative regulation establishes[~~sets out~~] design plan requirements for the construction of new and expanded facilities that deliver potable[~~pure~~] water for public or semipublic use and establishes requirements for submitting plans and specifications for[~~, as well as stipulating certain reporting requirements and requiring~~] modifications to existing facilities [~~for certain line replacements, and feeding activated carbon~~]. There is not a[~~no~~] federal regulation that deals with this subject matter;[~~,~~] therefore, this administrative regulation is not[~~no~~] more stringent than federal requirements[~~the federal regulation. The plans review process specified in this administrative regulation allows plans to be reviewed and certain judgments to be made about water systems to ensure that other state and federal requirements are being met~~].

Section 1. Preliminary Engineering Report.[~~Plans and Specifications.~~] (1) A preliminary engineering report for a proposed new facility or a modification to an existing facility shall be prepared by a professional engineer and [~~Plans to be~~] submitted to the cabinet.

(a) Except as established in paragraph (b) of this subsection, [~~Before~~] a supplier or potential supplier of water shall submit the preliminary engineering report to the cabinet before entering [~~may enter~~] into a financial commitment for or initiating[~~initiate~~] construction of a new public water system[~~,~~] or increasing[~~increase~~] the capacity of an existing public water system[~~, he shall submit the preliminary plans to the cabinet~~].

(b) A preliminary engineering report shall not be required for:

1. A semipublic treatment facility; or

2. Construction, extension, or improvement of a distribution system.

(c) The preliminary engineering report shall comply with 40 C.F.R. 141.5, Siting requirements.

(2) The preliminary engineering report shall contain the following information: [~~An applicant shall demonstrate to the cabinet evidence of efforts to avoid locating part or all of the new or expanded facility at a site which is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water system or a portion thereof. Except for the intake structure, the facility shall be out of the 100-year~~

~~flood plain.~~

~~(2) Preliminary information. The following information shall be submitted to the cabinet by a professional engineer on behalf of the applicant along with the fee required by 401 KAR 8:050, Section 1(1):~~]

(a) The name[~~names~~] of the applicant and of the owner of the plant;

(b) A [~~United States Geological Survey quadrangle~~] map that[~~which~~] shows the location of the proposed facility;

(c) The proposed source of water and the quantity available, with the location of the intake or wellhead identified by latitude and longitude in degrees, minutes, and seconds;

(d) An analysis of the water from the proposed source for contaminants regulated pursuant to 401 KAR Chapter 8[~~, which covers all regulated parameters~~], performed by a certified laboratory [~~certified by the cabinet or its authorized agent~~];

(e) A detailed description of the proposed facility;[~~, including size, flow rate through filters, settling basin size, and other general criteria; and~~]

(f) A detailed flow diagram of the proposed facility;

(g) Pilot study conclusions, if conducted; and

(h) An operation plan, including:

1. Anticipated load;

2.[~~,~~] Hours of operation;

3.[~~,~~] Area served; and

4. Number and certification of operational staff. [~~the name of the plant operator.~~]

(3) Preliminary engineering report[~~plans~~] approval.

(a) The preliminary engineering report shall be consistent with the requirements of the materials incorporated by reference in Section 9(a) - (c) of this administrative regulation.

(b) Upon receipt and review of the preliminary engineering report [~~plans, as set forth in subsection (1) of this section~~], the cabinet shall either approve the preliminary engineering report [~~plans~~] or return it[~~them~~] to the applicant[~~supplier of water~~] for revision.

1. Final plans shall not be submitted until the preliminary engineering report has been approved.

2. Approval of the preliminary engineering report shall not constitute final approval for construction.

3. A proposed[~~plans signifies approval only of the concept described in the preliminary plans and does not alter in any way the responsibility of the supplier of water to submit complete plans and specifications to the cabinet for final approval. The facility shall comply with the approved preliminary plans. Any~~] change in the preliminary engineering report[~~final design from the concept set forth in the preliminary plans~~] shall be submitted to the cabinet and approved prior to [~~its~~] incorporation in the final plans [~~and specifications~~].

Section 2. Final Plans and Specifications. (1)[~~(4) Preliminary plans for semipublic treatment facilities or distribution systems. Preliminary plans are not required by the cabinet for semipublic treatment facilities or for distribution system construction, extensions or improvements.~~

~~(5)~~] Final plans and specifications for the construction or modification of water treatment plants and distribution facilities shall be consistent with the materials incorporated by reference in Section 9(a) - (c) of this administrative regulation.

(a) If a preliminary engineering report is required pursuant to Section 1 of this administrative regulation, the final plans and specifications shall be consistent with the approved preliminary engineering report.

(b)1. Plans for the construction or modification of a public water system[~~systems~~] shall be submitted by the water system or shall be accompanied by a letter from the water system confirming that it has reviewed the plans, accepts the design, and has the capacity to[~~can~~] and shall[~~will~~] provide water service to the project.

2. A public water system that purchases[~~systems which purchase~~] water from another public water system[~~,~~] shall [~~also~~] submit a letter from the providing water system verifying the providing water system has the capacity and shall provide water service to the purchasing water system, including the proposed project[~~seller of water for all construction or modification projects~~] if[~~:~~] the project will result in:

a. Demand for water exceeding eighty-five (85) percent of the purchasers current purchase contract; or

b. Increase water[~~the project could result in a pressure reduction below thirty-five (35) pounds per square inch in either the purchaser's or the seller's system; or, the project will result in a~~] demand [~~for water~~] by the purchaser by[~~in excess of a~~] 10,000 gallons or more[~~gallon~~] per day [~~increase. This requirement may be waived by the cabinet if the purchaser shows that a reasonable attempt to obtain the letter has been made and the seller of water fails to provide the required letter. This provision shall not be the sole justification for rejection of the proposed project. The intent is to alert the seller and the purchaser that they are approaching their water purchase contract limitations and the state standards on minimum water pressure~~].

(c)[~~(b)~~] Plans and specifications for a[~~all~~] public water system shall be submitted to the cabinet,[~~systems~~] shall be prepared [~~and submitted to the cabinet~~] by a professional engineer licensed[~~registered~~] in Kentucky, and shall bear the engineer's seal, signature, and date of signature.

1. The seal of a professional engineer shall not be[~~is not~~] required on plans and specifications for semipublic water supply.

2. Prior to the construction or modification of a public or semipublic water system, the following documents and fees shall be submitted to the cabinet:

a. Three (3)[~~supplies, or for public water supply projects in which the expenditure for the completed project does not exceed $2,000. The construction or installation of any new facilities or works or the alteration or reconstruction of any existing facilities or works, in any public or semipublic water system, shall not begin until four (4)~~] copies of the plans and specifications, or any changes thereto;

b. For construction or modification of a distribution system, a complete Construction Application for Drinking Water Distribution form;

c. For the construction or modification of a treatment facility, a completed Construction Application for Drinking Water Treatment form;

d. For construction or modification of a semi-public facility, a completed Construction Application for Small Drinking Water Systems form;

e. A map that shows the location of the proposed facility;

f. Hydraulic calculations;

g. Design data and supporting documents necessary for review of the plans and specifications;

h. Chemical and microbiological analyses of a new raw water source if the plans and specifications are for a treatment facility; and

i. The fee required by 401 KAR 8:050.

3. Construction or modification of a public or semipublic water system shall not begin until the plans and specifications have been approved by the cabinet in writing.

4.[~~, together with design data as may be required for proper review of the plans, have been submitted to the cabinet and have been approved by the cabinet in writing. A complete package, including plans, specifications, necessary fees, letters and other information, shall be submitted in the form and content as may be specified by the cabinet, and shall be submitted at least thirty (30) days prior to the date on which action is requested of the cabinet.~~] The front page of the plans shall identify[~~contain the name of~~] the public water system[~~supply~~], the owner of the public water system, its [~~ownership,~~] location by city and county, and [~~the name of~~] the professional engineer[~~person~~] preparing the plans.

(d)[~~(c)~~] The cabinet's review of plans and specifications shall be limited to sanitary features of design and other features of public health significance and shall not include a review[~~an examination~~] of structural, mechanical, or electrical design [~~or economic factors~~].

(e)[~~(d)~~] The plans shall be drawn to scale and shall be accompanied by [~~proper~~] specifications, so as to allow[~~permit~~] a comprehensive engineering review, and shall include[~~, but not be limited to,~~] the following:

1. [~~If treatment facilities are involved, chemical analyses of the proposed raw water source or sources shall be performed and~~

~~evaluated before final approval is granted;~~

~~2. A~~] Plan and sectional views[~~view~~] with all necessary dimensions; and

2.[~~of the water treatment facilities;~~

~~3.~~] A piping diagram [~~showing all appurtenances, including treatment facilities,~~] in sufficient detail[~~, as well as pertinent elevation data,~~] to allow[~~permit~~] a hydraulic analysis of the system.

(2)[~~; and~~

~~4. Specifications containing details on all treatment equipment, including catalog identification of pumps, chlorinators, chemical feeders and related equipment.~~

~~5. A capacity to feed activated carbon shall be a part of the design for a new community or nontransient noncommunity surface water system.~~

~~6. A plan for a water line that would propose a section of line be laid within a 200 foot radius of an underground storage tank as defined in KRS 224.60-100 or a petroleum storage tank as defined in KRS 224.60-115, shall provide that all water lines within the 200 foot radius shall be ductile iron pipe or other nonpermeable pipe approved by the cabinet. Any future replacement of an existing water line within a 200 foot radius of a storage tank, whether or not plans are submitted to the cabinet, shall also meet this requirement. The requirements of this subparagraph may be waived, in writing, if the public water system shows to the satisfaction of the cabinet, that the protection afforded by nonpermeable material is unnecessary due to hydrological, geological, or other physical conditions at a particular site.~~

~~(6)~~] Approval of final plans.

(a) Upon receipt and review of final plans and specifications, the cabinet shall either approve the final plans and specifications in writing or return them to the applicant for revision.

(b) If approved, one (1) set of approved plans and specifications shall[~~stamped "approved" will~~] be returned to the engineer, [~~or person who prepared them~~] and one (1) set shall[~~will~~] be returned to the water supplier[~~supply~~].

Section 3.[~~(7)~~] Construction. (1)(a) During construction, a set of approved plans and specifications shall be available at the job site [~~at all times~~].

(b) Construction [~~All work~~] shall be performed in accordance with the approved plans and specifications.

(2)[~~(b)~~] If the cabinet's representative observes work being performed in a manner that[~~which~~] does not conform to the approved plans and specifications, the cabinet shall notify the owner in writing.

(3) Unless construction begins within two (2) years from the date of approval of the final plans and specifications, the approval shall expire.

Section 4.[~~(8)~~] Final approval of facility. (1) Upon completion of construction, a professional engineer[~~the person who presented the plans~~] shall certify in writing that the project has been completed in accordance with the ["]approved["] plans and specifications.

(2) A [~~The public water supply shall operate the facility consistent with the approved plans and specifications. Any~~] proposed change to the approved plans affecting sanitary features of design[~~plan~~] shall be submitted to the cabinet for approval in accordance with Section 2 of this administrative regulation.

(3) The public water supplier[~~supply~~] shall not implement a[~~any~~] change to the approved plans[~~plan~~] without the prior written approval of the cabinet.

Section 6.[~~(9) Expiration of approval. Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.~~

~~(10)~~] Modifications and extension of service. The cabinet may refuse to approve a modification [~~modifications~~] of a public water system or an extension of service to one (1) or more customers if the modification or extension of service may result in the water system's inability to supply consistent water service in compliance with 401 KAR 8:010 through 8:600.

Section 7. Treatment Techniques. A public water system shall comply with the treatment technique requirements established in 40 C.F.R. 141.10 through 141.111, General requirements and treatment techniques for acrylamide and epichlorohydrin.

Section 8. Variance. If plans and specifications deviate from the requirements of this administrative regulation, a written request for a variance shall be submitted with the plans and specifications or preliminary plans.

(1) The variance request shall include:

(a) a description of the reason for the variance request;

(b) The basis for the alternate plans or specifications, which shall be supported by current engineering practices; and

(c) Other information necessary to support the variance;

(2) A variance shall not be approved if it will not protect public health, water quality, and the environment.

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

(a) [~~inclusive.~~

~~(11) All plans and specifications submitted pursuant to this administrative regulation shall be consistent with "Recommended Standards for Water Works", "General Design Criteria for Surface and Groundwater Supplies", and "Water Policy Memorandum Number 84-02, General Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed Within Five Miles Upstream from Public Water Supply Sources, or for the Location of Public Water Supply Intakes Within Five Miles Downstream from Wastewater Discharges", which are incorporated by reference in Section 4 of this administrative regulation.~~

~~Section 2. Treatment Techniques for New and Existing Systems. (1) General requirements. The requirements of this section constitute primary drinking water regulations. These administrative regulations establish treatment techniques in lieu of maximum contaminant levels for specified contaminants.~~

~~(2) Treatment techniques for acrylamide and epichlorohydrin. Each public water system shall certify annually in writing to the cabinet, using third party or manufacturer's certification, that when acrylamide and epichlorohydrin are used in drinking water systems, the combination or product of dose and monomer level does not exceed the levels specified as follows:~~

~~Acrylamide = 0.05 percent dosed at one (1) ppm (or equivalent);~~

~~Epichlorohydrin = 0.01 percent dosed at twenty (20) ppm (or equivalent).~~

~~Certifications may rely on manufacturers or third parties, as approved by the cabinet.~~

~~Section 3. All existing community and nontransient noncommunity water systems using surface water as a source shall, by January 1, 1995, submit to the cabinet for approval plans to establish the capacity to feed activated carbon to the treatment system. Within twelve (12) months of the approval of the plans, the water system shall certify in writing to the cabinet that the approved plan has been implemented.~~

~~Section 4. The following documents are hereby incorporated by reference and are available for public inspection and copying, subject to copyright laws, between 8 a.m. and 4:30 p.m., Monday through Friday, except for state holidays, at the Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:~~

~~(1)~~] Great Lakes - Upper Mississippi River Board of State and Provincial Public Health and[~~&~~] Environmental Managers "Recommended Standards for Water Works", 2007;

(b)[~~1992, published by and available from Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, New York 12224.~~

~~(2)~~] "General Design Criteria for Surface and Ground Water Supplies", April 2010;

(c)[~~July 1990, which is published by and may be obtained from the Division of Water; and~~

~~(3)~~] "Water Policy Memorandum number 84-02, General Guidelines for Conducting Stream Studies for Wastewater Dis-

charges Proposed within Five Miles Upstream from Public Water Supply Sources, or for the Location of Public Water Supply Intakes within Five Miles Downstream from Wastewater Discharges", 1984;

(d) "Construction Application for Drinking Water Distribution", DW-1, 4/2010;

(e) "Construction Application for Drinking Water Treatment", DW-2, 4/2010; and

(f) "Construction Application for Small Drinking Water Systems", DW-3, 4/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.[~~, which is published by and may be obtained from the Division of Water.~~]

LEONARD PETERS, Secretary

APPROVED BY AGENCY: June 1, 2010

FILED WITH LRC: June 4, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2010, at 5 p.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 20, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email: Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodmann, Assistant Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for public and semipublic water systems to submit preliminary and final construction plans to the cabinet for approval.

(b) The necessity of this administrative regulation: This administrative regulation allows the cabinet to approve or disapprove the plans and specifications for public and semipublic water systems to assure sanitary features of design.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-110 requires the cabinet to review and approve or disapprove plans for the construction or modification of water treatment plants and distribution systems

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures and guidelines to allow the cabinet to review, approve, or disapprove plans and specifications for proper construction and modification of public and semipublic water treatment plants and distribution systems.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are to incorporate the most recent version of "Recommended Standards for Water Works" and update "General Design Criteria for Surface and Groundwater Supplies". Other amendments are to update the requirements for professional engineer's seal on public water supply projects to comply with statutory requirements, outline provisions for variance, incorporate application forms to be submitted with projects, and reduce the number of copies of plans required for submittal.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation will allow the professional engineering community to use the most current design guidelines for the construction or expansion of water treatment plants and distribution systems.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-110 requires the cabinet to review and approve or disapprove plans for the construction or modification of water treatment plants and distribution systems. The amendment will allow the cabinet to use the most current engineering design criteria in the review process.

(d) How the amendment will assist in the effective administration of the statutes: The adoption of updated design criteria will require the use of the most recent design criteria and allow the cabinet to more effectively oversee plans and specifications for the design and operation of water systems. The new applications will streamline the review process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects 480 public water systems, 52 semipublic water systems, 7 bottled water systems, and any proposed new public or semipublic water systems that may be created.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public water systems will be required to use current engineering design criteria when designing new or expanded water treatment and distribution facilities and submitting the plans to the cabinet for approval. An application will need to be included with all plans submitted to the cabinet for approval. Plans for public water supplies that cost less than $2,000 will now require the seal of a professional engineer, as required by KRS Chapter 322.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the revised design criteria and the most current edition of "Recommended Standards for Water Works" will have a negligible impact on the cost of compliance with existing regulations. Requiring the seal of a professional engineer on public water supply projects that do not exceed $2,000 may impact those project costs. However, since few projects cost less than $2,000, compliance with this change will have an overall insignificant impact on the water system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Plans for the construction or expansion of water treatment or distribution systems will be able to use current engineering design criteria for those plans. Amendments to this regulation lower the number of copies required with submittal, thereby reducing printing and mailing costs. The new applications submitted with plans more efficiently communicates technical specifications needed in the review process thereby potentially resulting in reduced project costs.

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

(a) Initially: There are no additional costs to implement the amendments to this administrative regulation.

(b) On a continuing basis: There are no additional costs to implement the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The funding for the implementation and enforcement for this administrative regulation is federal funds provided for the enforcement of the Safe Drinking Water Act.

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

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

administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation makes distinctions between public and semipublic water systems. Semipublic water systems are not required to have an engineer sign plans. Semipublic water systems are typically very small, less than twenty-five people, and the different requirement reduces the financial burden to these small systems. This is not a change from the currently effective administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation applies to public and semipublic water systems. Public water systems are often owned by city governments or organized under county governments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. 142.16 requires state primacy programs to have an enforceable requirement for determining disinfection and filtration technologies appropriate to treating water to comply with federal requirements. KRS 224.10-110 requires that plans and specifications for public and semipublic water systems be approved or disapproved by the cabinet.

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

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

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

(c) How much will it cost to administer this program for the first year? Additional costs are not anticipated to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? Additional costs are not anticipated to administer this program in subsequent years.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 142.10(b)(5) under Primary Enforcement Responsibility states that a state has primary enforcement responsibility for public water systems in the state if there has been "the establishment and maintenance of an activity to assure that the design and construction of new or substantially modified public water systems will be capable of compliance with the State primary drinking water regulations". Special Primacy Requirements for maintaining primacy for enacting and enforcing the Safe Drinking Water Act provisions also apply. 40 C.F.R. 142.16(b), (g), (h), (i), (m), (n), (o) and (p) have language that relates to the approval of public water system design or construction activities that will affect compliance with the SDWA.

2. State compliance standards. KRS 224.10-100, 224.10-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 142.10(b)(5) establishes the requirement for an activity to assure the design and construction of new or substantially modified public water systems will be capable of compliance with the State primary drinking water regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. The requirements of 401 KAR 8:100 are not more stringent than 40 C.F.R. 142.16. The federal regulation gives general guidance and this regulation provides the specific requirements for submission and approval of plans. The requirements of 224.10-110 and 401 KAR 8:100 precede the development of 40 C.F.R. 142.16. However, the existence of these state requirements has allowed Kentucky to meet the primacy requirement outlined in the response to question 1.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements of 401 KAR 8:100 are not more stringent than 40 C.F.R. 142.16. The federal regulation gives general guidance and this regulation provides the specific requirements for submission and approval of plans.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Amendment)

503 KAR 1:110. Department of Criminal Justice Training basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (f), 15.386(1), 15.404(1), 15.440(1)(d)

STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h), 15.334(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund and for maintenance of basic training records.

Section 1. Basic Training Graduation Requirements. To graduate from the department's basic training course, a recruit shall:

(1) Successfully complete a minimum of 768 hours of training, based upon the curriculum approved by the council in accordance with KRS 15.330 and 503 KAR 1:090;

(2) Attain:

(a) A seventy (70) percent overall score on all graded training areas covered during the course for which a numerical score is assigned. A recruit who does not achieve a seventy (70) percent overall score shall be considered to have failed basic training; and

(b) An eighty (80) percent overall score in First Aid/CPR/AED. A recruit who does not achieve an eighty (80) percent overall score shall be considered to have failed basic training;

(3) Pass all training areas covered during the course for which a pass or fail designation is assigned. A recruit who does not pass all pass or fail training areas shall be considered to have failed basic training; and

(4) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training area for which they were assigned.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section.

(1) Physical training entry requirements.

(a) Within five (5) days from the first date of the basic training course, the recruit shall be tested in the following events, in the order listed, [~~successfully complete each of the following events~~] as instructed and evaluated by qualified department instructors:

1. Bench press [~~One (1) repetition maximum (RM) bench press equal to sixty-four (64) percent of the recruit's body weight~~];

2. Sit-ups [~~Eighteen (18) sit-ups in one (1) minute~~];

3. 300 meter run [~~in sixty-five (65) seconds~~];

4. [~~Twenty (20)~~] Pushups; and

5. One and five-tenths (1.5) mile run [~~in seventeen (17) mi-~~

~~nutes twelve (12) seconds~~].

(b) A recruit shall be considered to have passed the physical training entry requirements 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 paragraph (a) of this subsection:

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

a. 9 points - Recruit must bench press at least fifty-three and three-tenths (55.3) percent of body weight;

b. 9.5 points - Recruit must bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;

c. 10 points - Recruit must bench press at least sixty-four (64) percent of body weight;

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

e. 11 points - Recruit must bench press at least seventy-three (73) percent or more of body weight;

2. Sit-ups:

a. 9 points - Recruit must complete at least thirteen (13) repetitions in one (1) minute;

b. 9.5 points - Recruit must complete at least sixteen (16) repetitions in one (1) minute;

c. 10 points - Recruit must complete at least eighteen (18) repetitions in one (1) minute; and

d. 11 points - Recruit must complete nineteen (19) repetitions or more in one (1) minute;

3. 300 meter run:

a. 9 points - Recruit must complete in sixty-eight (68) seconds or less;

b. 9.5 points - Recruit must complete in sixty-seven (67) seconds or less;

c. 10 points - Recruit must complete in sixty-five (65) seconds; and

d. 11 points - Recruit must complete in less than sixty-five (65) seconds;

4. Push-ups:

a. 9 points - Recruit must complete at least fourteen (14) repetitions in two (2) minutes;

b. 9.5 points - Recruit must complete at least seventeen (17) repetitions in two (2) minutes;

c. 10 points - Recruit must complete at least twenty (20) repetitions in two (2) minutes;

d. 10.5 points - Recruit must complete at least twenty-three (23) repetitions in two (2) minutes; and

e. 11 points - Recruit must complete twenty-five (25) repetitions or more in two (2) minutes; and

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

a. 9 points - Recruit must complete in at least 1,076 seconds (17:56);

b. 9.5 points - Recruit must complete in at least 1,054 seconds (17:34) or less;

c. 10 points - Recruit must complete in at least 1,032 seconds (17:12) or less;

d. 10.5 points - Recruit must complete in at least 1,004 seconds (16:44) or less; and

e. 11 points - Recruit must complete in less than 975 seconds (16:15) or less.

(c) A recruit shall:

1. Not be awarded more than eleven (11) points or less than nine (9) points in any one (1) of the five (5) physical ability events; and

2. Be deemed to have failed the physical ability test if he or she fails to achieve at least:

a. A total score of fifty (50) points; or

b. Nine (9) points on any one (1) physical training event.

(e) Retest.

1. A recruit 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, except that 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.

2. A recruit that obtains a point value for each event, but does not obtain an overall score of fifty (50), shall be retested on the physical training entry test again, in its entirety.

3. A retest shall not occur any sooner than forty-eight (48) hours or any later than seventy-two (72) hours from the date of the initial test attempt.

4. [~~If a recruit passes all events when participating in the physical training entry test, the recruit shall have met the physical training entry requirements.~~

~~(c) Retest. If a recruit fails to pass all events when participating in the physical training entry test:~~

~~1. The recruit shall retest in the failed events no earlier than forty-eight (48) hours from the date of the entry test;~~

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

5.[~~3.~~] If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training entry requirements; and

6.[~~4.~~] If the recruit does not pass all previously failed events on the date of the retest, the recruit shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

(2) Physical training graduation requirements.

(a) In order to graduate, the recruit 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 entry test score requirements in subsection (1)(b) of this administrative regulation, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols: [~~Within five (5) days from the final date of the basic training course, the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:~~]

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

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

3. 300 meter run in sixty-five (65) seconds;

4. Pushups. Twenty-five (25) pushups; and

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

(b) If a recruit passes all events when participating in the physical training graduation test, the recruit shall have met the physical training graduation requirements.

(c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

1. The recruit shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;

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

3. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training graduation requirements; and

4. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall be considered to have failed basic training.

(3) Physical training midpoint test. During week ten (10) [~~nine (9)~~] of basic training, the recruits shall be administered the events of the physical training requirements for purposes of reporting their progress to their respective law enforcement agencies.

Section 3. Failure and Repetition of Basic Training. (1) Failure of Training.

(a) A recruit that is removed from basic training due to a training segment or area failure prior to the successful completion of DUI Detection shall:

1. Be required to repeat the entire basic training course; and

2. Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030.

(b) If a recruit fails a segment or area after the completion of DUI Detection the recruit shall:

1. Be removed from the basic training class;

2. Reenter basic training in a subsequent class that has the first available vacancy; and

3. Start the training at the beginning of the training area or segment that the recruit did not successfully complete.

(c) [~~If a recruit fails the Practical Examination I, Practical Examination II, or Academic Examination 5: Final Exam, the recruit shall reenter basic training at the conclusion of DUI Detection.~~

~~(d)~~] Upon the recruit's return, the recruit shall attend and participate in the area or segment, but shall not be retested in the training area or segment that was previously passed.

1. In accordance with Section 6(2) of 503 KAR 3:030, the recruit's hiring agency shall prepay to the department the full tuition, room, and board costs of repeating the training area which was failed. The hiring agency may recover these costs of repeating the training area from its recruit; and

2. If the training area is successfully completed, the recruit shall continue with the remainder of the basic training course.

(2) Failure of the physical training graduation requirements. A recruit who fails the physical training graduation requirement in Section 2(2) of this administrative regulation:

(a) Shall not graduate with the recruit's basic training class;

(b) Shall be permitted to retest with the very next basic training class; and

(c) Upon successful completion, may graduate with that class.

(3) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

(a) Be required to repeat basic training in its entirety; and

(b) Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

Section 4. Basic Training Curriculum. The Basic training curriculum shall include the following areas:

(1) Administration and testing;
(2) Telecommunications (MDT);
(3) Legal subjects;
(4) Physical training;
(5) Defensive tactics;
(6) Patrol;
(7) Vehicle operations;
(8) Firearms;
(9) Criminal investigation;
(10) D.U.I./Field sobriety testing;
(11) Breath testing;
(12) Practical [~~Modular~~] evaluation/testing;
(13) First Aid/C.P.R./A.E.D.; and
(14) Homeland security.

Section 5. Examinations. (1) A recruit shall be examined in the following [~~segments and~~] six (6) areas of basic training:

(a) Area I, composed of the following:
1. Academic Examination 1 [~~segment~~];
2. Vehicle Operations: Day Range;
3. Work Zone Safety;
4. Criminal Justice Information System: Mobile Data Terminal (CJIS:MDT); and
5. Academic Examination 2;
(b) Area II:
1. Breath Test Operator: Practical;
2. Breath Test Operator: Written;
3. DUI: Practical; and
4. DUI: Written;
(c) Area III:
1. Cardiopulmonary Resuscitation (CPR): Practical;
2. Cardiopulmonary Resuscitation (CPR): Written;
3. Automated External Defibrillation (AED): Written;
4. First Aid: Practical;
5. First Aid: Written; and
6. Practical Examination 1;
(d) Area IV:
1. Academic Examination 3;
2. Handgun: Day;
3. Handgun: Low Level Light; and
4. Academic Examination 4;
(e) Area V:
1. Long Gun: Shotgun Day;
2. Long Gun: Shotgun Low Level Light;
3. Long Gun: Rifle Day; and
4. Long Gun: Rifle Low Level Light;
(f) Area VI:
1. Defensive Tactics: Written;
2. Defensive Tactics: Practical;
3. Academic Examination 5: Final Exam; and
4. Practical Examination 2. [~~Academic Examination 1 (Segment 2);~~
~~3. Academic Examination 1 (Segment 3); and~~
~~4. Academic Examination 1 (Segment 4);~~
~~5. Academic Examination 1 (Segment 5);~~
~~(b) Area II:~~
~~1. Firearms, including:~~
~~a. Day handgun;~~
~~b. Night handgun;~~
~~c. Day Shotgun; and~~
~~d. Low-light shotgun qualification;~~
~~2. Performance driving evaluation, practical; and~~
~~3. Defensive tactics shall include a:~~
~~a. Practical test; and~~
~~b. Written certification test;~~
~~(c) Area III:~~
~~1. Breath test segment, including:~~
~~a. Practical examination; and~~
~~b. Written examination; and~~
~~2. DUI detection segment, including:~~
~~a. Practical examination; and~~
~~b. Written examination;~~
~~(d) Area IV: American Red Cross certification in the following:~~
~~1. Professional rescuer CPR automated external defibrillation segment; and~~
~~2. First aid segment;~~
~~(e) Area V: Mobile Data Terminal Certification segment; and~~
~~(f) Area VI: Practical exams:~~
~~1. Practical Examination I; and~~
~~2. Practical Examination II.~~]

(2) A recruit shall be permitted one (1) reexamination in each of the six (6) areas of basic training.

(3) A recruit who fails an examination, other than defensive tactics or the Practical Examinations, shall not be reexamined:

(a) Earlier than forty-eight (48) hours from the original examination; or

(b) Later than:

1. Ten (10) days after the original examination. A recruit may submit a written request to the branch manager for an additional five (5) days in which to take the reexamination; and

2. The last scheduled day of the basic training course.

(4) Failure of a defensive tactics examination or Practical Examination II.

(a) If the failure occurs prior to the last scheduled day of defensive tactics training, the recruit shall not be reexamined earlier than the last scheduled day of defensive tactics training.

(b) If the failure occurs on the last scheduled day of defensive tactics training, the recruit shall not be reexamined:

1. Earlier than twenty-four (24) hours from the original examination; or

2. Later than the last scheduled day of the basic training course.

(c) If a recruit fails Practical Examination II, the recruit may be reexamined:

1. Immediately; or

2. No later than the last scheduled day of the basic training course.

(5) A recruit shall be considered to have failed basic training if the recruit:

(a) Fails a reexamination in accordance with subsection (2) of this section; or

(b) Fails two (2) examinations in the same area of basic training.

Section 6. Absence. (1) A recruit may have excused absences from the course with approval of the director of the certified school or his designee.

(2) An excused absence from the course which causes a recruit to miss any of the 768 hours of basic training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of Basic Training. (1) If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:

(a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and

(b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

(2) If a recruit is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the recruit shall be permitted to complete the unfinished areas of the course within 180 days immediately following his or her return from active duty service.

Section 8. Termination of Employment while Enrolled. If, while enrolled in the basic training course, a recruit's employment as a police officer is terminated by dismissal, and the recruit is unable to complete the course, the recruit shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall forward a final roster indicating the pass or fail status of each recruit to the council.

(2)[~~, for each recruit who completes the course, complete and send the following forms to the council:~~

~~(a) DOCJT Form 68-1 (Application for Training Credit);~~

~~(b) DOCJT Form 29-1 (Agency Requests for Training); and~~

~~(c) DOCJT Form 29-1PA (Agency Requests for Training - Pay Agency Form).~~

~~(2) The department shall send a copy of the DOCJT Form 68-1 to the:~~

~~(a) Council for verification; and~~

~~(b) DOCJT Records Section Supervisor.~~

~~(3)~~] All training records required for fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund administrator upon written request.

(3)[~~(4)~~] All training records shall be:

(a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and

(b) Maintained in accordance with applicable provisions of KRS Chapter 171. [~~Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "DOCJT Form 68-1 - Application for Training Credit", 8/22/02;~~

~~(b) "DOCJT Form 29-1 - Agency Requests for Training", 10/20/06; and~~

~~(c) "DOCJT Form 29-1PA - Agency Requests for Training - Pay Agency Form", 7/12/06.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

KEITH R. CAIN, Chair

APPROVED BY AGENCY: June 9, 2010

FILED WITH LRC: June 10 at 3 p.m.

CONTACT PERSON: Steve Lynn, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475, phone (859) 622-3073.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 9 a.m. in Room 211, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2010, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by 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 August 2, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the curriculum and training requirements for those attending the Department of Criminal Justice Training Law Enforcement Basic Training academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility, as established in KRS 15.330, to approve law enforcement officers as having met the requirements for completion of law enforcement training, specifically basic training which is necessary for participation in the Kentucky Law Enforcement Foundation Program Fund (KLEFPF), and peace officer certification pursuant to KRS 15.380 through 15.404.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992. This administrative regulation is required to establish graduation standards for DOCJT basic training, which is necessary for the administration of KLEFPF (KRS 15.410 through 15.510), and peace officer certification (KRS 15.310, and 15.380 through 15.402).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for graduation from DOCJT basic training, the successful completion of which is necessary before an officer may achieve active peace officer certification, or participate in KLEFPF.

(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 does the following:

1. Amends the physical ability tests that are administered to police recruits entering the basic training academy;

2. Amends the subjects, training areas, and tests administered in law enforcement basic training; and

3. Deletes forms that are no longer needed by the Department of Criminal Justice Training and Kentucky Law Enforcement Council.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to update training subjects and testing in basic training.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992. This administrative regulation is required to establish graduation standards for DOCJT basic training, which is necessary for the administration of KLEFPF (KRS

15.410 through 15.510), and peace officer certification (KRS 15.310, and 15.380 through 15.402).

(d) How the amendment will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for graduation from DOCJT basic training, the successful completion of which is necessary before an officer may achieve active peace officer certification, or participate in KLEFPF.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth that utilize DOCJT basic training, which is approximately 400 agencies, including most state, county and local agencies, but excluding the Kentucky State Police, and the Lexington, Louisville, and Jefferson County Police Departments.

(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 agencies should not experience any detrimental impact. They should be benefited by receiving an officer-graduate who is better trained.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive a better trained officer upon graduation.

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

(a) Initially: No additional costs.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(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 should be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all divisions of state or local government that employ peace officers who are required by KRS 15.380 to be certified, including city and county police departments, and county sheriffs' offices. All new city, county, and state law enforcement are required to attend and complete law enforcement basic training.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), 15.330(1)(a) and (h), and 15.380.

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? There should be no additional costs to the KLEC, DOCJT, or the agencies that are affected by this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Costs are expected to remain the same.

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

KENTUCKY TRANSPORTATION CABINET
Office of Audits
Division of Road Fund Audits
(Amendment)

601 KAR 1:201. Recordkeeping and audit requirements of taxes imposed in KRS 138.655 through 138.7291.

RELATES TO: KRS 131.110, 138.227, 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: [~~Pursuant to~~] 49 U.S.C. 31705[~~317.05~~] and KRS 138.227 authorize the department to enter into the[~~, Kentucky is required to conform to the~~] provisions of the International Fuel Tax Agreement (IFTA). This administrative regulation establishes[~~sets forth~~] the recordkeeping and audit requirements of IFTA and KRS 138.655 through 138.7291 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 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:

(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) [~~"IRP" means the International Registration Plan.~~

~~(5)~~] "IFTA license" means a motor fuel tax license issued in accordance with the IFTA Articles of Agreement and the IFTA [~~"~~]Procedures Manual.

(5) "IRP" means the International Registration Plan.[~~"~~]

(6) "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.

(7) "KIT license" means the Kentucky intrastate tax license issued by the Kentucky Transportation Cabinet to intrastate motor carriers subject to the taxes imposed by KRS 138.660(1) and (2).

(8) "KYU license" means the Kentucky Highway Use License issued by the Kentucky Transportation Cabinet to motor carriers subject to the tax imposed by KRS 138.660(3).

(9) "Motor carrier" is defined by[~~means as defined in~~] KRS 138.655(5).

(10) "Over-the-road fuel" means fuel purchased from a retail distributor and placed directly into a qualified motor vehicle.

(11)(a) "Qualified motor vehicle" means a motor vehicle oper-

ated by a motor carrier that is used, designed, or maintained for the transportation of persons or property and that is a[~~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 does[~~shall~~] not mean a[~~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.

(12) "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, or October 1 through December 31.

(13) [~~"Recreational vehicle" means a motor home, 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.~~

~~(14)~~] "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.

(14)[~~(15)~~] "Taxpayer" means a Motor Carrier operating on[~~upon~~] the roads of the Commonwealth subject to the[~~those~~] taxes in KRS 138.660.

Section 2. Governing IFTA Documents. The following IFTA documents prepared and adopted by the membership of the International Fuel Tax Association shall govern the base jurisdiction[~~Kentucky's~~] recordkeeping requirements and audit provisions of the taxes imposed by KRS 138.660(1) and (2):

(1) International Fuel Tax Agreement Articles of Agreement as incorporated by reference in 601 KAR 1:200[~~revised July 1998~~];

(2) International Fuel Tax Agreement Procedures Manual as incorporated by reference in 601 KAR 1:200[~~revised July 1998~~]; and

(3) International Fuel Tax Agreement Audit [~~Procedures~~] Manual as incorporated by reference in 601 KAR 1:200[~~revised July 1998~~].

Section 3. Tax Recordkeeping. (1) Each taxpayer shall maintain a complete record of all motor fuel purchased, received, or used in the conduct of its business. The fuel records shall contain [~~at least~~] the following information:

(a) The date of each receipt of fuel;

(b) The name and address of the person or business from whom the fuel was purchased or received;

(c) The name of the purchaser of the fuel;

(d) The number of gallons of fuel received;

(e) The type of fuel;

(f) The vehicle or equipment into which the fuel was placed; and

(g) If applicable, complete records on power takeoff use of motor fuel established[~~as set forth~~] in subsection (14)[~~(15)~~] of this section.

(2) Except as established[~~set forth~~] in subsection (14) of this section, each taxpayer shall maintain detailed distance records that show operations on an individual-vehicle basis. The distance records for each qualified motor vehicle shall contain at least the following information:

(a) Both taxable and nontaxable usage of fuel;

(b) Distance traveled for taxable and nontaxable use; [~~and~~]

(c) Beginning and ending date of each trip;

(d) Trip origination and destination;

(e) Route traveled on trip;

(f) Trip beginning and ending odometer readings;

(g) Total mileage of each trip; and

(h) Distance recaps for each qualified motor vehicle for each jurisdiction in which the qualified motor vehicle is operated.

(3) [~~In order for a taxpayer~~] To obtain credit for a tax-paid fuel purchase, a taxpayer shall maintain a receipt or invoice, a credit card receipt or automated vendor-generated invoice, or transaction listing [~~shall be maintained by the taxpayer~~]. An acceptable receipt or invoice for tax-paid fuel purchased shall not have been altered or indicate erasures and shall contain at least the following information:

(a) The date of purchase of fuel;

(b) The name and address of the person or business from whom the fuel was purchased;

(c) The number of gallons purchased;

(d) The type of fuel;

(e) The price per gallon of the fuel purchased or the total amount of the sale;

(f) Unit number of the motor vehicle into which the motor fuel was placed; and

(g) Purchaser's name. [~~(~~]In the case of a lease agreement, receipts are acceptable in either name, if[~~provided~~] the records and lease agreement [~~firmly~~] indicate the legal connection to the reporting party.[~~)~~]

(4) A taxpayer shall not apply for credit for withdrawal from licensee-owned, tax-paid bulk fuel storage unless the following detailed records are kept:

(a) Date of withdrawal;

(b) Number of gallons withdrawn;

(c) Fuel type;

(d) Unit number and type of [~~the~~] motor vehicle or equipment into which the fuel was placed; and

(e) Purchase and quarterly beginning and ending inventory records to substantiate that tax was paid on the bulk purchase.

(5)(a) A taxpayer shall account separately for tax-paid fuel purchased as storage or bulk from over-the-road fuel purchased.[~~over the road;~~]

(b) The licensee shall retain a copy of each delivery ticket and receipt for storage or bulk fuel.[~~;~~]

(c) Bulk fuel inventory reconciliations shall be maintained. Records shall be maintained to distinguish fuel placed in a qualified motor vehicle from fuel placed in a nonqualified vehicle and other uses.[~~;~~]

(d) Each tax-paid purchase shall be supported by a receipt, invoice, credit card receipt or automated vendor-generated invoice or transaction listing.[~~; and~~]

(e) Over-the-road fuel receipts shall identify the vehicle by the registration plate number or unit number and type of vehicle[~~,~~] because only a vehicle identified with the fuel tax licensee's operation shall[~~may~~] be reported for[~~or~~] mileage or fuel consumption.

(6) A separate total shall be compiled for each of the following fuel types used by a fuel tax licensee:

(a) Gasoline;

(b) Diesel;

(c) Kerosene;

(d) Gasohol;

(e) Liquid petroleum gas; and

(f) Compressed natural gas[~~; and~~

~~(g) Other~~].

(7) Each taxpayer shall retain the information required by subsections (1) through (6) of this section for each quarterly reporting period for a period of four (4) years from the date of filing the tax report based on these records[~~, except when a "Consent of Extension of Statutory Limitation of Time for Assessment" has been filed with the Division of Audit Review to extend the four (4) year statutory period limitation~~].

(8) Each taxpayer subject to a KYU license shall maintain the following records on operations within Kentucky of each motor vehicle that is subject to the tax imposed by KRS 138.660(3):

(a) Type of motor vehicle;

(b) Declared gross weight of the motor vehicle;

(c) Weigh bills showing the actual weight of the loaded motor vehicle;

(d) Except as provided in subsection (14) of this section, mileage operated by unit number in Kentucky as reported on trip sheets and driver logs that shall include the following:

1. Beginning and ending odometer readings of each trip;

2. Each route driven;
3. Beginning and ending date of each trip;
4. Trip origin and destination; and
5. Total trip miles;
(e) Bills of lading; [and]
(f) Off-highway mileage, including settlement sheets and[which includes] periodical logs showing entrance and exit[entering and leaving] of public highways; and
(g) Manual or computer-generated off-road mileage recaps for Kentucky.
(9)(a) Each taxpayer subject to a KYU license shall retain the information required by subsection (8) of this section for each quarterly reporting period for a period of five (5) years from the date of filing the tax report based on these records[, except when a "Consent of Extension of Statutory Limitation of Time for Assessment" has been filed for the Division of Audit Review to extend the five (5) year statutory period limitation].
(b) If the records required to be maintained in subsection (8) of this section are insufficient, incomplete, or unavailable for the auditor to complete an audit, the auditor shall[may] examine any other records of the taxpayer that may[which might] assist in establishing the tax liability of the taxpayer.
(10) Both the lessor and lessee involved in the short or long-term lease of motor vehicles shall maintain sufficient records, including copies of the leases and [any] supplemental agreements, to allow determination [at any time] of the entity responsible for reporting or payment of the taxes.
(11) Records shall[may] be retained by the lessor and lessee on microfilm, microfiche, or other computerized or condensed record storage system [if the system has been preapproved by the Transportation Cabinet's Division of Audit Review].
(12) If a taxpayer chooses to use an on-board electronic data recording system in lieu of or in addition to trip reports for tax reporting, the devices, recordkeeping, data collection, reporting and taxpayer responsibility shall comply with Section P600 of the International Fuel Tax Agreement[IFTA] Procedures Manual incorporated by reference in 601 KAR 1:200.
(13)(a) A taxpayer subject to an IFTA or KIT license who operates exclusively in intrastate commerce and for whom[which] all of the mileage traveled is taxable, may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records established[set forth] in subsection (2) of this section.
(b) A taxpayer subject to a KYU license who operates exclusively in intrastate commerce and for whom[which] all of the mileage traveled is taxable, may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records established[set forth] in subsection (8)(d) of this section.
(c) A taxpayer claiming off-road miles shall maintain records as established in subsection (8) of this section.
(14) A taxpayer subject to an IFTA or a KIT license applying for a refund pursuant to Section 11 of 601 KAR 1:200 shall, in addition to the other requirements of this section, maintain the following records:
(a) Proof of power-take-off exemption percentage including how the percentage was calculated;
(b) Listing of bulk fuel storage that[which] includes:
1. Location of bulk fuel storage;
2. Capacity of bulk fuel storage; and
3. If[Whether] tanks are designated for on road highway use or off road highway use["on" or "non" highway use];
(c) Kentucky Revenue Cabinet Motor Fuels Tax Refund Permit Number and Kentucky Revenue Cabinet Sales and Use Tax Number, if applicable; and
(d) Equipment listing for each motor vehicle on which the refund is being requested including:
1. Vehicle type;
2. Use of power-take-off;
3. Vehicle unit number;
4. Vehicle identification number; and
5. Type of fuel used in each vehicle.

Section 4. Auditing. (1) For an audit, the taxpayer shall have [available] the following information available if requested by the auditor:
(a) Records of all motor fuel purchased, received, or used as identified in Section 3(1) of this administrative regulation;
(b) Detailed distance records that show operations on an individual vehicle basis as identified in Section 3(2) of this administrative regulation;
(c) [For] Credit for tax-paid fuel purchases [the] records as identified in Section 3(3) of this administrative regulation;
(d) [For] Credit for tax-paid bulk fuel storage [the] records as identified in Section 3(4) of this administrative regulation;
(e) Copies of Kentucky income tax returns for the periods under audit;
(f) Copies of IFTA or KIT returns, KYU returns, and IRP returns that represents Kentucky operations, or the documentation of another responsible[responsibility] party for the payment of the related taxes;[.]
(g) A general ledger relating to each period under audit; and
(h) The related books of original entry.
(2)(a) The fuel tax audit of a taxpayer subject to an IFTA or a KIT license shall be performed in accordance with the provisions of the International Fuel Tax Agreement["IFTA] Audit [Procedures] Manual[" which is incorporated by reference in Section 5 of this administrative regulation].
(b) An audit of a taxpayer subject to a KYU license shall be performed by verifying the following:
1. The combined license weight of each motor vehicle operated by the motor carrier;
2. A correct odometer [correctness];
3. Reports of each trip that adequately identify[identifies] the truck, trip mileage, and route driven;
4. Weight reports;
5. Continuity of trips;
6. Off-highway mileage;
7. Seasonal variations in the motor carrier's business;
8. Electronic data processing; and
9. Sampling of representative months of operation.
(3) At least thirty (30) days prior to conducting a routine audit, the Transportation Cabinet shall contact the taxpayer in writing advising of the approximate date that the audit is to be conducted and the time period the audit shall[will] cover.
(4)(a) The auditor shall conduct and document a preaudit conference with the taxpayer [(]or the taxpayer's designated representative[)] outlining the carrier's operation, the audit procedures, the records to be examined, the sample period, and the sampling procedures.
(b) The taxpayer and auditor shall determine at the preaudit conference who shall have the responsibility for the final acceptance of audit findings and who shall be involved in the closeout conference.
(5) The auditor shall conduct and document a close-out conference with the taxpayer [(]or the taxpayer's designated representative[)] outlining preliminary findings to include proposed assessment, recommendations resulting from the review of the records and internal control, rights of appeal, and to whom the audit report shall[should] be addressed.
(6)(a) The Transportation Cabinet shall furnish the taxpayer a letter of audit findings and recap schedules.
(b) If requested, the cabinet shall supply [any] other work papers to the taxpayer.
(7)(a) A taxpayer shall be notified of additional tax assessments by mail.
(b) 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.
(8) A penalty assessed under KRS 138.715 shall be applied to audit assessments based upon the percentage of the underpayment of the tax liability prior to the deduction of fuel tax purchase credits, [(]if applicable[)] by the licensee.

Section 5. Protest of Assessments. (1)(a) A written protest may be filed by the taxpayer, or other persons representing the taxpayer, and shall include a supporting statement and documents that[which] identify the specific adjustments requested or the por-

tions of the audit being protested and shall establish[~~setting forth~~] the reasons the protest is being made as established in[~~(~~]KRS 131.110(1)[~~)~~].

(b) The protest shall be filed with the Transportation Cabinet, Division of Road Fund Audits[~~Audit Review~~] within forty-five (45) days from the date of the notice of tax due.

(2) If an IFTA license taxpayer elects to exercise the right under Section 1450.200 of the International Fuel Tax Agreement[~~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.

(3) If an IFTA member jurisdiction elects to exercise the right under Section 1360.100 of the International Fuel Tax Agreement[~~IFTA~~] Articles of Agreement to reaudit the taxpayer, the cabinet shall consider this a protest of the assessment by the taxpayer.

(4) If the supporting statements and documentation are not sufficient to change the assessment results, the taxpayer may request an information gathering or protest conference with the Division of Road Fund Audits[~~Audit Review~~].

(5) Within sixty (60) days of the taxpayer submitting complete additional information or within sixty (60) days of a protests 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 as established in KRS 131.110[~~, stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals (KRS 131.110)~~].

(6) If the taxpayer 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 as established in [~~(~~]KRS 131.110[~~)~~].

(7) Within thirty (30) days from the date of the final ruling by the cabinet, a written protest may be filed by the taxpayer, or other persons representing the taxpayer, with the Kentucky Board of Tax Appeals as established in [~~(~~]KRS 131.110[~~)~~].[~~Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "International Fuel Tax Agreement", (July 1998 edition), International Fuel Tax Association;~~

~~(b) Form TC 95-214, "Fuel Tax Refund for Power Takeoff", (June 1996 edition), Transportation Cabinet.~~

~~(2) This material may be inspected, copied, or obtained at the Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

MIKE HANCOCK, Acting Secretary
REBECCA GOODMAN, Executive Director
APPROVED BY AGENCY: June 12, 2010
FILED WITH LRC: June 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on July 22, 2010 at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business August 2, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the recordkeeping and auditing requirements of IFTA and KRS 138.655 through 138.7291.

(b) The necessity of this administrative regulation: This administrative regulation was originally promulgated in conformity with 49 U.S.C. 31705 in conjunction with the implementation of IFTA in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statues: This administrative regulation sets up procedures related to the recordkeeping and audit requirements of the taxes imposed in KRS 138.655 through 138.7291.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide the most current information relating to audit and recordkeeping requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates language and cabinet procedures that have changed since the regulation was originally filed in 1998. This amendment will require the cabinet to issue a final ruling to a taxpayer within sixty (60) days of a protest conference.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update information, language, procedures and forms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates required procedures that have become outdated.

(d) How the amendment will assist in the effective administration of the statutes: Motor carriers affected by IFTA in Kentucky will have the most current information on audit and recordkeeping procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects approximately 60,000 motor carriers who operate trucks on the 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 know current procedures and forms.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: No costs are associated with these amendments.

(a) Initially:

(b) On a continuing basis:

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

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

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

directly or indirectly.

(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 Road Fund Audits.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.110, 138.227, 138.655-138.7291, 186.650, 49 C.F.R. 390.21, and 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. No additional costs are required or expected.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended regulation 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 additional costs are required or expected.

(d) How much will it cost to administer this program for subsequent years? No additional 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 5:110. Vocational pupils, reimbursement for.

RELATES TO: KRS 157.370

STATUTORY AUTHORITY: KRS 156.070, 157.370(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.370(8) requires a local board of education to be reimbursed separately for the cost of transporting pupils from a parent school to a vocational-technical school or to a vocational education center, and requires the Board of Education to promulgate an administrative regulation establishing the reimbursement amount. This administrative regulation establishes the reimbursement requirements and limitations for those districts that transport secondary school pupils.

Section 1. A local district may provide bus transportation for the district's secondary school pupils from their parent school to a vocational school (e.g., a state vocational-technical school, an area vocational education center, or to a vocational training site) where an integral part of the basic vocational instructional program is being provided.

Section 2. [~~An application showing anticipated transportation of pupils to a vocational school for which reimbursement is to be claimed shall be submitted to the Office of District Support Services for approval on or before October 1 of the current school year.~~

~~Section 3.~~] A request for reimbursement for transportation to a vocational school shall be the responsibility of the district providing the transportation.

Section 3.[~~4.~~] A request for reimbursement for actual transportation to a vocational school shall be made on an annual basis on or before June 30 of the current school year to the Office of District Support Services in the Department of Education.

Section 4.[~~5. Tentative~~] Funding in the current year shall be based upon information submitted on district applications[~~. Any necessary adjustments shall be made in the following year~~] based on the actual transportation provided.

Section 5.[~~6.~~] A local district that transports pupils to a vocational school on buses owned and operated by the district shall be reimbursed for these expenditures as follows:

(1) Bus mileage at a rate not to exceed the average cost per bus mile for county school districts, exclusive of driver's cost, as calculated by the Office of District Support Services for the previous school year; and

(2) The vocational school bus driver's cost at an hourly rate not to exceed the hourly rate paid by the district to a driver in the district's regular transportation program with similar qualifications.

Section 6.[~~7.~~] If a district's pupils are transported to a vocational school over a toll road as the nearest or best route, either on a board-owned bus or a bus contracted to the board, the district shall be reimbursed for the toll road fee in addition to mileage and driver's cost.

Section 7.[~~8.~~] (1) A district that contracts for the transportation of its pupils to a vocational school shall be reimbursed an amount not to exceed the total amount that would result if:

(a) The vocational school bus mileage is multiplied by the average cost per bus mile for county districts exclusive of driver's cost; and

(b) the driver's total hours are multiplied by the average hourly rate paid by county school districts plus necessary toll road fees.

(2) The average mileage cost and average hourly rate shall be those calculated by the Office of District Support Services for the previous school year.

Section 8.[~~9.~~] (1) Bus mileage shall be calculated from the parent school to the vocational school over the nearest and best route. If the same bus is used to transport pupils to a vocational school from more than one (1) school within the same district, bus mileage shall be calculated from the school located farthest from the vocational school over the nearest and best route as the bus serves the other schools en route to the vocational school.

(2) A bus round trip shall be considered the transportation of the student to and from a vocational school. A bus driver transporting students on a bus from a high school to a vocational school and returning back without the students to the high school shall be considered to have made half of a round trip. Similarly, a bus driver departing from the high school without the students, going to the vocational school and returning back to the high school with the students shall be considered to have made half of a round trip.

Section 9.[~~10.~~] The total hours of driver's pay per day that will be reimbursed for transporting pupils to a vocational school shall be calculated on the basis of what the driver does while the pupils are in class at the vocational school as follows:

(1) If the driver waits at the vocational school for the full time that the pupils are in class, the driver's time shall start when the bus leaves the parent school farthest from which pupils are transported to the vocational school and shall stop when the pupils are returned to the farthest parent school;

(2) If the driver unloads the pupils at the vocational school, then takes the bus to another location and returns to pick up the pupils when the classes are finished, the first half of the drivers time shall start when the bus leaves the parent school farthest from the vocational school and ends when the driver reaches the point where the bus is parked until time to make the bus trip to the voca-

tional school to return the pupils to their parent school. The second half of the driver's time shall start when the bus leaves the point where the bus was parked and ends when the bus reaches the parent school farthest from the vocational school; and

(3) If possible or practical, the district shall pay the bus driver by the method that results in the least cost when the driver's time and the required bus mileage are considered in combination.

Section 10.[~~11.~~] The driver of the bus that transports pupils to a vocational school shall meet the same requirements as the district's bus drivers that transport pupils to the district's public schools.

Section 11.[~~12.~~] A school district shall be reimbursed for the cost of vocational school transportation for the actual number of days that pupils were transported to the vocational school not to exceed the number of instructional days in the school district's approved amended calendar [~~up to a maximum of 175 days per school year~~].

Section 12.[~~13.~~] One (1) district may make a contract with another district to transport the other district's pupils to a vocational school on the same bus with the transporting district's pupils or on a separate bus.

Section 13.[~~14.~~] If one (1) district contracts to provide a bus or buses to transport another district's pupils to a vocational school, the district providing the bus or buses shall claim additional reimbursement only for the extra bus miles required and the extra hours of bus driver time required to provide this service for the other district.

Section 14.[~~15.~~] A district shall make maximum use of the bus that transports pupils to a vocational school through planning and routing. The use of more than one (1) bus for transporting pupils from any school or group of schools to a vocational school shall be approved only if the length of time required for one (1) bus to pick up and transport the pupils would be impractical or the number of pupils on one (1) bus would exceed seating capacity.

Section 15.[~~16.~~] A district shall not be reimbursed for the transportation of vocational school pupils on field trips, excursions, competitions, or recreational trips.

Section 16.[~~17.~~] A district shall not be reimbursed for the vocational transportation from the parent school to the vocational school if the vocational school is on the same grounds or on adjacent grounds to the parent school or within one-half (1/2) mile of the parent school.

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

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

APPROVED BY AGENCY: June 15, 2010

FILED WITH LRC: June 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 28, 2010 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five 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 August 2, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to 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 TEIRING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes terms under which KDE will provide a separate reimbursement to school districts that transport their secondary school pupils from the parent school to a vocational-technical school or to a vocational education center and establishes the reimbursement limits.

(b) The necessity of this administrative regulation: KRS 157.370 requires a local board of education to be reimbursed separately from the Fund to Support Education Excellence in Kentucky (SEEK) for the cost of transporting pupils from the parent school to a vocational-technical school or to a vocational education center per KBE regulation.

(c) How this administrative regulation conforms to the content of the authorizing statute: The administrative regulation establishes terms under which a separate SEEK reimbursement will be paid to those districts that transport their secondary school pupils from the parent school to a vocational-technical school or to a vocational education center and establishes the reimbursement limits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation fulfills that requirement in KRS 157.370 requiring specific terms and procedures under which the KDE will provide a separate SEEK reimbursement to those districts that transport their secondary school pupils from the parent school to a vocational-technical school or to a vocational education center.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the regulation will require that districts submit only the June 30 request for reimbursement based on actual transportation for vocational students, thus eliminating the previous requirement for an additional estimated request for vocational transportation during the school year.

(b) The necessity of the amendment to this administrative regulation: KDE is considering all options to reduce the time and paperwork burden on school districts while streamlining internal operations. Only one reimbursement request per year is necessary under KRS 157.370 so the regulation has been changed to require less time and paperwork for the school districts and KDE.

(c) How the amendment conforms to the content of the authorizing statute: Only one reimbursement request per year is necessary under KRS 157.370 so the regulation has been changed to require less time and paperwork for the school districts and KDE.

(d) How the amendment will assist in the effective administration of the statutes: The change in the regulation will meet the requirements of statute while reducing the time and paperwork burden on school districts and the KDE.

(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.

(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 school districts by requiring only one vocational transportation reimbursement request to KDE each year, rather than two. The KDE will need to collect and process only one reimbursement request each year, rather than two.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts must submit a June 30 request for reimbursement based on actual numbers for transportation for vocational students. KDE will have to collect and process the requests only once per year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question

(3): School districts submit only one vocational transportation reimbursement request to KDE each year, thus saving staff time and paperwork in the districts. KDE will experience a reduction in staff time devoted to this task due to only one vocational transportation reimbursement to collect and process each year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Paperwork will be reduced. Staff time previously devoted to completing two requests will be reduced for school districts and KDE.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs to implement. Cost savings for school districts and KDE will result.

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

(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? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts that transport their secondary school pupils from the parent school to a vocational-technical school or to a vocational education center.

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 157.370

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. School district funds generated by this administrative regulation will be used to reimburse school districts for the cost of transporting secondary school pupils from the parent school to a vocational-technical school or to a vocational education center. The amount of dollars expended by the State for this administrative regulation is set by statute as part of the state SEEK flow through allocation to school districts and will not generate revenue for the state.

(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 costs.

(d) How much will it cost to administer this program for subsequent years? No costs.

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

704 KAR 3:303. Required core academic standards [~~program of studies~~].

RELATES TO: KRS 156.070, 156.160, 158.6451, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected outcomes for students and schools established in KRS 158.6451. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the Kentucky core academic standards [~~program of studies~~], which contains the general courses for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky core academic standards [~~Program of Studies~~].

Section 2. Incorporation by Reference. (1) The "Kentucky Core Academic Standards, June 2010" [~~Program of Studies for Kentucky Schools, Grades Primary-12", June 2006~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Curriculum Development, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

TERRY HOLLIDAY, Ed.D., Commissioner
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: June 15, 2010

FILED WITH LRC: June 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 28, 2010, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five 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 August 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the Kentucky Core Academic Standards, which contains the minimum content requirements across all content areas students shall meet before graduating from a Kentucky public high school.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.160.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation incorporates by reference the document that provides the specific minimum curriculum content requirements for Kentucky schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the document that

provides the specific minimum curriculum content requirements for Kentucky schools.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: The amendment to this regulation both changes the name from the Program of Studies to Kentucky Core Academic standards and replaces the current content standards in English/language arts and mathematics with the new revised standards in the document incorporated by reference.

(a) How the amendment will change this existing administrative regulation: The amendment to this regulation both changes the name from the Program of Studies to Kentucky Core Academic standards and replaces the current content standards in English/language arts and mathematics with the new revised standards in the document incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: Changes to the Program of Studies document are necessary due to changes in the name of the document incorporated by reference and the new revised English/language arts and mathematics standards.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to establish courses of study to comply with the expected outcomes for students and schools established in KRS 158.6451.

(d) How the amendment will assist in the effective administration of the statutes: The Kentucky Core Academic Standards will assist schools in developing instructional courses primary through grade 12 that contain the minimum content required for high school graduation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 school districts

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Districts will assist schools in aligning the educational programs in schools to meet the requirements in the Kentucky Core Academic Standards.

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

(a) Initially: The professional development to implement the new revised content standards in English/language arts and mathematics will be approximately $1,000,000 for professional development at the statewide level. This was provided for in the 2010 state budget. The KDE will be funding the regional networks that are supporting the implementation of the standards but the districts will be covering the cost of their leadership team participants' travel and substitutes (if needed).

(b) On a continuing basis: The ongoing costs to support the implementation of standards the redirection of some state grant dollars and Race to the Top, if funded.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. The amount of dollars expended by the State for this administrative regulation will include the establishment of the networks to help implement the standards. These costs will be covered in part by redirection of state grant funds and RTTT funds if awarded. The cost to the school districts will be funding leadership team participants' travel and stipends or substitutes (if needed) to attend training. The school districts will also have costs involved with implementing the new standards in their districts. These costs would be permissible expenditures of current PD dollars.

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

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

(c) How much will it cost to administer this program for the first year? About $1 million at the statewide level which will be covered by dollars allocated by the legislature, redirection of some state grant dollars, and proposed federal funding.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing new standards for other content areas will be decreased due to this work with English/language arts and mathematics because capacity will be built around the process.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

704 KAR 3:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1)(a), (c), 158.645, 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The content standards for the courses of study are described in the Kentucky core academic standards[~~program of studies~~], 704 KAR 3:303. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma, including the requirements beginning with the graduating class of 2012.

Section 1. Until the graduating class of 2012, each student in a common school shall complete an individual learning plan which incorporates emphasis on career development and shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the following minimum requirements:

(1) Language arts: Four (4) credits (including English I, II, III, and IV;

(2) Social studies: three (3) credits (to incorporate U.S. History, Economic, Government, World Geography, and World Civilization;

(3) Mathematics: three (3) credits (including Algebra I, Geometry, and one (1) elective as provided in the program of studies, 704

KAR 3:303);

(4) Science: three (3) credits (including life science, physical science, and earth and space science as provided in the program of studies, 704 KAR 3:303;

(5) Health: one-half (1/2) credit;

(6) Physical education: one-half (1/2) credit;

(7) History and appreciation of visual and performing arts (or another arts course which incorporates this content): one (1) credit; and

(8) Electives: seven (7) credits.

Section 2. Beginning with the graduating class of 2012, each student in a common school shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the Kentucky core academic standards[~~program of studies~~], 704 KAR 3:303. Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content. The required credits and demonstrated competencies shall include the following minimum requirements:

(1) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky core academic standards for English/language arts[~~strands of reading, writing, speaking, listening, observing, inquiry, conventions, analysis, and using technology as a communication tool~~].

(a) Language arts shall be taken each year of high school;

(b) If students do not meet the college readiness benchmarks for English/language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, an English/language arts transitional course or intervention, which shall be monitored to address remediation needs, shall be required before exiting high school;

(2) Social studies - three (3) credits to include the content contained in the Kentucky core academic standards for social studies [~~strands of historical perspective, including U.S. History, geography, economics, government and civics, and cultures and societies~~];

(3) Mathematics - four (4) courses of mathematics, three (3) credits shall[~~to~~] include the content contained in the Kentucky core academic standards for mathematics[~~strands of number property and operation, measurement, geometry, data analysis and probability, and algebraic thinking,~~] and include[~~including~~] the following minimum requirements:

(a) [~~One (1) mathematics course taken each year of high school to ensure readiness for postsecondary education or the workforce based on the student's individual learning plan;~~

~~(b) Required courses shall include~~] Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky core academic standards[~~program of studies~~], 704 KAR 3:303;

(b) A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce.

(c) If students do not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, a mathematics transitional course or intervention which shall be monitored to address remediation needs shall be required before exiting high school; and

(d)[~~and~~

~~(c)~~] Prealgebra shall not be counted as one (1) of the three (3) required mathematics credits for high school graduation but may be counted as an elective;

(4) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky core academic standards for health[~~strands of biological science, physical science, earth and space science, and unifying concepts~~];

(5) Health - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for health[~~strands of individual well-being, consumer decision, personal wellness, mental wellness, and community services~~];

(6) Physical education - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for physical education[~~strands of personal wellness, psychomotor, and lifetime activity~~];

(7) History and appreciation of visual and performing arts (or another arts course which incorporates this content) - one (1) credit to include the content contained in the Kentucky core academic standards for arts and humanities[~~strands of arts, dance, music, theatre, and visual arts,~~] or a standards-based specialized arts course based on the student's individual learning plan;

(8) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and

(9) Demonstrated performance-based competency in technology.

Section 3. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060.

(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.

Section 4. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address Vocational Studies Academic Expectations 2.36-2.38 as established in Academic expectations, 703 KAR 4:060.

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent shall receive information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6) Beginning with the graduating class of 2013, the development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.

Section 5. (1) A board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky core academic standards[~~program of studies~~], 704 KAR 3:303, and a rigorous performance standards policy established by the board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance

standards have been met.

(2) A board of education shall award credit toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one subject; or

(b) A standards-based performance-based credit, regardless of the number of instructional hours in one (1) subject.

(3) A local board of education which has chosen to award standards-based performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7 or 8 if:

(a) The content of the course is the same that is established in the Kentucky core academic standards[~~Program of studies~~], 704 KAR 3:303; and

(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

(4) A board of education which has chosen to award standards-based performance-based credit shall establish a policy for a performance-based credit system that includes, at least:

(a) The procedures for developing performance-based credit systems and for amending the system;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards as addressed in 704 KAR 3:303, Kentucky core academic standards[~~Program of studies~~], and 703 KAR 4:060, Academic expectations;

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:

1. Designed to further student progress towards the individual Learning plan;

2. Supervised by qualified instructors; and

3. Aligned with state and local content and performance standards.

(5) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Section 1 or 2 of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, senior year or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; and

(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school and the community.

(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060.

Section 6. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education shall be awarded a graduation diploma.

(2) The local board of education shall award the diploma.

Section 7. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal or teacher from awarding special recognition to a student.

Section 8. (1) Until the graduating class of 2012, if the severity of an exceptional student's disability precludes a course of study leading to receipt of a diploma, an alternative program shall be offered. This program shall be based upon student needs, as specified in the individual educational plan, and shall be reviewed at least annually. A student who completes this course of study shall be recognized for achievement. This may be accomplished by the local board of education awarding a certificate.

(2) Beginning with the graduating class of 2012, if the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Section 2 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered. This course of study shall be based upon student needs and the provisions specified in 704 KAR 3:303, Kentucky core academic standards[~~Program of studies~~], and shall be reviewed at least annually. A student who completes this course of study shall receive a certificate of attainment to be awarded by the local board of education consistent with the graduation practices for all students.

TERRY HOLLIDAY, PH.D., Commissioner
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: June 15, 2010

FILED WITH LRC: June 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 28, 2010 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five 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 August 2, 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 Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum high school graduation requirements for students. The regulation includes existing high school graduation requirements and new graduation requirements for students beginning in 2012.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 156.160 and 158.645.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the minimum high school graduation requirements in accordance with KRS 156.160 and 158.645.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidelines and minimum requirements for local districts to meet the educational goals and capacities required of students in Kentucky's public education system as defined by KRS 158.645.

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

(a) How the amendment will change this existing administrative regulation: The amendment to 704 KAR 3:305 includes the following:

The name of the required program of studies is being changed to

Kentucky Core Academic Standards. An additional requirement is being added in English/language arts and mathematics for students who don't meet the benchmarks as determined by the Council on Postsecondary Education in those content areas, student must take a transition course or be provided intervention service to ensure they are college ready. Districts may substitute an equivalent experience for mathematics once the student has completed Algebra I, Algebra II, and Geometry.

(b) The necessity of the amendment to this administrative regulation: This regulation is being amended to increase the rigor of secondary education for all students in Kentucky schools to help increase the success of students in postsecondary education and training.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.645 identifies the capacities required of students in the public education system. This regulation further establishes the content requirements that will allow and assist all students to acquire those capacities.

(d) How the amendment will assist in the effective administration of the statutes: 704 KAR 3:305 establishes the required content that must be provided to students in order to meet the minimum high school graduation requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local districts and schools must ensure the content established in 704 KAR 3:305 is provided to each student prior to high school graduation. Institutions of higher education will also be impacted because students will come better prepared for credit bearing course work. Parents and students will be impacted because remediation experiences in mathematics and English/language arts will take place in the high school, free of charge, instead of at the college level at a cost to families.

(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: Local districts and schools will revise course offerings and available educational opportunities to ensure students have access to required content. Institutions of higher education will also be impacted because students will come better prepared for credit bearing course work. Parents and students will be impacted because remediation experiences in mathematics and English/language arts will take place in the high school, free of charge, instead of at the college level at a cost to families.

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

(a) Initially: There will be no additional costs to the agency or school districts to implement this administrative regulation. Districts and schools will use existing funding to implement the regulation.

(b) On a continuing basis: There will be some additional costs to the agency to implement this administrative regulation. KDE will be working with partners to develop transitional courses and intervention modules to provide to districts and school at no or nominal cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 and 158.645

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. The amount of dollars expended by the State for this administrative regulation will be in the development of modules for transitional courses and we anticipate SREB grant funds for that work. In order to develop modularized courses that meet the needs of our students, we estimate $25,000 per course to develop from scratch. This amount includes, project management, content specialists, course designers, technology specialists, planning, research, face-to-face meetings, and an estimated 500 hours of total work ($25 to $50 an hour depending on type of work). An estimated seat cost for the courses is currently $330 per student per course. This cost can change by as much as $100 ($230 per student per course) depending on popularity and enrollments. School district may be asked to pay a nominal fee for access to the transitional courses if they want to use a virtual teacher to deliver the content. By allowing flexibility with the mathematics courses beyond the requirements, this should reduce the strain on local districts to provide access significantly more mathematics courses than they are providing now.

(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? KDE - $50,000 (may be granted to us by SREB) and approximately $8000 to hire teachers for the online traditional courses. This would be offset by the districts. Local districts- $230-$330 per student if use an online course, no cost if use the modules with their own teachers teaching them.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employment and Training
(Amendment)

787 KAR 2:020. Confidentiality of records of the Office of Employment and Training.

RELATES TO: KRS 151B.280(3), 341.190

STATUTORY AUTHORITY: KRS 151B.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.280(3)(a) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations to protect the confidential nature of records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet. This administrative regulation establishes which records of the cabinet's Office of Employment and Training shall be considered confidential in order to encourage full disclosure of information on the part of job applicants and employers and to provide guidelines to employment service personnel in responding to requests for information.

Section 1. The employment and service records identified in

this section shall be confidential and shall not be subject to disclosure, except as provided in KRS 151B.280(3):

(1) Foreign Labor Certification forms relating to the H-2A agricultural or H-2B nonagricultural programs:

(a) ETA 750 Part A, Application for Alien Employment Certification;

(b) ETA 750 Part B, Statement of Qualifications of Alien;

(c) ETA 790, Agricultural and Food Processing Clearance Order;

(d) ETA-9127, Foreign Labor Certification Quarterly Activity Report;

(e) ETA Form 9142, Application for Temporary Employment Certification;

(f) ETA Form 9142 - APPENDIX A.2, Application for Temporary Employment Certification;

(g) Wage Survey Interview Record;

(h)[(f)] H-2A (1), Employer-Furnished Housing and Facilities;

(i)[(g)] Migrant and Seasonal Agricultural Worker Protection Act, Housing, Safety and Health Check List;

(j)[(h)] H-2A Field Audit;

(k)[(i)] H-2A #2, Housing Inspection;

(l)[(j)] Kentucky H-2A Alien Labor Certification Program, Customer Satisfaction Survey;

(m)[(k)] H-2A, #3, Employment Eligibility Verification Certificate;

(n)[(l)] Kentucky Office of Employment and Training Prevailing Wage Information Request;

(o)[(m)] Kentucky Office of Employment and Training Transmittal of Application for Alien Employment Certification; and

(p)[(n)] Kentucky Office of Employment and Training Recruitment Notification;

(2) Work opportunity tax credit:

(a) Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit;

(b) ETA Form 9061, Individual Characteristics Form Work Opportunity Tax Credit; and

(c) ETA Form 9063, Employer Certification Work Opportunity Tax Credit;

(3) Trade Adjustment Assistance and Trade Re-Employment Act:

(a) TAA/TRA-855, Request for Determination of Entitlement to TAA/TRA;

(b) TAA/TRA-855A, Request for Employment Information;

(c) TAA/TRA-858, Request for Occupational/Remedial Training and Allowances While in Training;

(d) TAA-858B;

(e) ETA-9042A, Petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA);

(f) TAA Certification of Training Waiver;

(g) ATAA-400A, Verification of Employment;

(h) ATAA-301, Verification of Employment for Monthly Wage Supplement ATAA;

(i) ATAA-400, Request for Alternative Trade Adjustment Assistance (ATAA);

(j) ATAA-401, ATAA Trade Certified Employer Information; and

(k) Kentucky HCTC-100, Request for Temporary KY-HCTC Bridge Grant Payment;

(4) Employ Kentucky Operating System (EKOS):

(a) Customer Services-Agency Information Screen;

(b) Customer Services-Achievement Objectives Screen;

(c) Customer Services-Services Screen;

(d) Customer Services-Service History Screen;

(e) Customer Services-Enrollments Screen;

(f) Customer Services-Outcomes Screen;

(g) Customer Services-Comments Screen;

(h) Customer Services-Audit Screen;

(i) Customer Services-Lit/Num Testing Screen;

(j) Customer Services- Follow-Up Screen;

(k) Customer Services-Youth ISS Screen;

(l) Customer Detail-Gen. Info Screen;

(m) Customer Detail-Add'l Info Screen;

(n) Customer Detail-Programs & Public Assistance Screen;

(o) Customer Detail-Programs & Public Assistance Screen II;

(p) Customer Detail-Objective Screen;

(q) Customer Detail-Work His. Screen;

(r) Customer Detail-Ed/Lic Screen;

(s) Customer Detail-Skills Screen;

(t) Customer Detail-Saved Searches Screen;

(u) Customer Detail-Activities Screen;

(v) Customer Detail-Comments Screen;

(w) Customer Detail-Tests Screen;

(x) Customer Detail-Tests (GATB) Popup Screen;

(y) Customer Detail-e3 Info Screen;

(z) Comp Assess-Employment Screen;

(aa) Comp Assess-Education Screen;

(bb) Comp Assess-Financial Screen;

(cc) Comp Assess-Family Screen;

(dd) Comp Assess-Health Screen;

(ee) Comp Assess-Treatments Screen;

(ff) Comp Assess-Legal Screen;

(gg) Comp Assess-Housing Screen;

(hh) Comp Assess-Transportation Screen; and

(ii) Comp Assess-Comments Screen;

(5) Workforce Investment Act Title 1, W.I.A. - 20, Eligibility and Verification; and

(6) OET-EA1, Commonwealth of Kentucky - Microsoft Elevate America Program Voucher Request Form.

Section 2. Access to records of the Division of Unemployment Insurance shall be governed by the provision of KRS 341.190.

Section 3. Sharing of Information as authorized by law. Confidential information shall be shared only in accordance with KRS 341.190.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ETA 750 Part A, "Application for Alien Employment Certification", rev. 11/07;

(b) ETA 750 Part B, Statement of Qualifications of Alien", rev. 11/07;

(c) ETA 790, "Agricultural and Food Processing Clearance Order", rev. 7/04;

(d) ETA-9127, "Foreign Labor Certification Quarterly Activity Report", rev. 8/05;

(e) ETA Form 9142, Application for Temporary Employment Certification, rev. 6/10;

(f) ETA Form 9142 - APPENDIX A.2, Application for Temporary Employment Certification, rev. 6/10;

(g) "Wage Survey Interview Record", rev. 8/07;

(h)[(f)] H-2A (1), "Employer-Furnished Housing and Facilities", rev. 5/02;

(i)[(g)] "Migrant and Seasonal Agricultural Worker Protection Act, Housing, Safety and Health Check List", rev. 4/04;

(j)[(h)] H-2A, "Field Audit", rev. 10/04;

(k)[(i)] Kentucky H-2A #2, "Housing Inspection", rev. 6/02;

(l)[(j)] Kentucky H-2A, "Alien Labor Certification Program, Customer Satisfaction Survey," rev. 8/07;

(m)[(k)] H-2A, #3, "Employment Eligibility Verification Certificate" rev. 8/09;

(n)[(l)] Kentucky "Office of Employment and Training Prevailing Wage Information Request", rev. 12/06;

(o)[(m)] Kentucky "Office of Employment and Training Transmittal of Application for Alien Employment Certification", rev. 5/2008;

(p)[(n)] Kentucky "Office of Employment and Training Recruitment Notification", rev. 5/08;

(q)[(o)] Form 8850, "Pre-Screening Notice and Certification Request for the Work Opportunity Credit", rev. 6/07;

(r)[(p)] ETA Form 9061, "Individual Characteristics Form Work Opportunity Tax Credit", rev. 12/06;

(s)[(q)] ETA Form 9063, "Employer Certification Work Opportunity Tax Credit", rev. 12/06;

(t)[(r)] TAA/TRA-855, "Request for Determination of Entitlement to TAA/TRA", rev. 4/06;

(u)[(s)] TAA/TRA-855A, "Request for Employment Information", rev. 1/05;

(v)[(t)] TAA/TRA-858, "Request for Occupational/Remedial

Training and Allowances While in Training", rev. 8/05;

(w)[~~(u)~~] TAA-858B, rev. 8/05;

(x)[~~(v)~~] ETA-9042A, "Petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA)", rev. 11/05;

(y)[~~(w)~~] "TAA Certification of Training Waiver", rev. 4/07;

(z)[~~(x)~~] ATAA-400A, "Verification of Employment", rev. 4/08;

(aa)[~~(y)~~] ATAA-301, "Verification of Employment for Monthly Wage Supplement ATAA", rev. 4/08;

(bb)[~~(z)~~] ATAA-400, "Request for Alternative Trade Adjustment Assistance (ATTA)", rev. 4/08;

(cc)[~~(aa)~~] ATAA-401, "ATAA Trade Certified Employer Information", rev. 4/08;

(dd)[~~(bb)~~] Kentucky HCTC-100, "Request for Temporary KY-HCTC Bridge Grant Payment", rev. 1/08;

(ee)[~~(cc)~~] "Customer Services-Screens 1 through 11", rev. 5/02;

(ff)[~~(dd)~~] "Customer Detail-Screens 1 through 14", rev. 5/02;

(gg)[~~(ee)~~] "Comp Assess-Screens 1 through 10", 5/02; and

(hh)[~~(ff)~~] Workforce Investment Act Title 1, "W.I.A.-20, Eligibility and Verification", rev. 10/06; and

(ii)[~~(gg)~~] OET-EA1, "Commonwealth of Kentucky - Microsoft Elevate America Program Voucher Request Form", rev. 10/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Employment and Training, 275 E. Main Street, 2nd Floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM MONTEROSSO, Executive Director

APPROVED BY AGENCY: June 15, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2010 at 10 a.m. at the offices of the Office of Employment and Training, 275 E. Main Street, 2nd floor, Executive Director's Office, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2010.

Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: William Monterosso, Executive Director; Office of Employment and Training; 275 East Main, 2C; Frankfort, Kentucky 40602, phone (502) 564-5331, fax (502) 564-7452.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: William Monterosso, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation delineates those records or reports retained by the Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Employment and Training which are confidential and not subject to disclosure to third parties that either directly or indirectly identify clients or former clients of the programs listed within the regulation.

(b) The necessity of this administrative regulation: This administrative regulation is needed to clarify those records or reports which should be confidential. It is necessary to protect the confidential information of employers, attorneys, and agents utilizing the foreign labor certification programs in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.280 designates the secretary of the cabinet as the individual responsible for promulgating administrative regulations which protect the confidential nature of reports and records received by the Office of Employment and Training which either directly or indirectly identify a client or former client. This administrative regulation revision adds newly created U.S. Department of Labor forms to the statute for protection of confidential information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clearly identify records or reports containing information that is confidential in nature, not to be released to any third party.

(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 adds protection of confidential information contained on ETA Form 9142 - Application for Temporary Employment Certification and ETA Form 9142-APPENDIX A.2 - Application for Temporary Employment Certification which are used by the Cabinet in conjunction with the appropriate federal agency to administer the H-2A program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include and maintain confidential information on newly implemented U.S. Department of Labor forms involving the utilization of foreign labor for agricultural and non-agricultural programs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 151B.280 provides that the secretary shall be responsible for promulgating administrative regulations which protect the confidential nature of reports and records received by the Office of Employment and Training which either directly or indirectly identify a client or former client.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clearly identifies documents deemed confidential which are utilized by the Cabinet in administering the H-2A agricultural program and nonagricultural programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 4,500 current or former clients of the specified programs will be assured that personal, identifying information shall be protected form unauthorized disclosure to third parties. This amendment ensures that individual businesses who hire through the H-2A program will be protected as well.

(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: Forms included in this amendment are required to be completed in compliance with the instructions issued with each.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This is a procedural change only and will have no cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The clients and former clients will be assured that their personal information remains protected from unauthorized redisclosure.

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

(a) Initially: No cost is associated with the implementation of this amendment as it is a procedural change and only has a small impact on routine functions of existing office staff.

(b) On a continuing basis: No cost is associated with this amendment as the procedural change only has a small impact on routine functions of existing office staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The H-2A program is entirely federally funded; however, there will be no additional funding generated or expended with the implementation of this change.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: The H-2A program is entirely federally funded; however, there will be no addi-

tional funding expended in implementing this change. There are no fees currently associated with the H-2A program.

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

(9) TIERING: Is tiering applied? This amendment deals with the privacy rights of current and former clients of the cabinet. The confidentiality provisions are applied uniformly to all individuals and information and tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Employment and Training, Division for Workforce and Employment Services

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.280, Pub.L 82-414 (Immigration and Nationality Act), 8 C.F.R. 274a.6(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? No revenue will be generated or expended with the implementation 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? No revenue will be generated or expended with the implementation of this regulation.

(c) How much will it cost to administer this program for the first full year? Implementation of this amendment will create no additional administrative costs in the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 C.F.R. Part 655

2. State compliance standards. KRS 151B.280

3. Minimum or uniform standards contained in the federal mandate. 20 C.F.R. 655.132

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This question is not applicable.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety
and Health Education and Training
(Amendment)

803 KAR 2:300. General.

RELATES TO: KRS 339.015, 29 C.F.R. 1910.3-1910.7, 1910.9[~~, EO 2009-537~~]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[~~, EO 2009-537~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1910.3-1910.7 and 1910.9 establish occupational safety and health standards found to be national consensus standards or established federal standards. [~~EO 2009-537, effective June 12, 2009, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor.~~] This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.3-1910.7 and 1910.9, revised July 1, 2009; and

(2) [~~1910.9, revised July 1, 2009; and~~

~~(3)~~] The revisions to 29 C.F.R 1910.6 as published in the September 9, 2009 Federal Register, Volume 74, Number 173[~~August 11, 2009 Federal Register, Volume 74, Number 153 and confirmed in the November 10, 2009 Federal Register, Volume 74, Number 216~~].

J.R. GRAY, Chairman

APPROVED BY AGENCY: June 2, 2010

FILED WITH LRC: June 4, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed

administrative regulation. Written comments shall be accepted until August 2, 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: Kristi Redmon, Health Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: In Section 1, this administrative regulation defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. Part 1910. Section 2 also updates the C.F.R. to July 1, 2009, and, establishes the amendment to 29 C.F.R. 1910.6 as published in the September 9, 2009 Federal Register, Volume 74, Number 173, which incorporates references to national consensus standards. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. As a result of the adoption of the final rule published in the September 9, 2009 Federal Register, 803 KAR 2:300 must be amended to include the adopted changes. OSHA is updating the references in its regulations to recognize more recent editions of the applicable national consensus standards, and is deleting editions of the national consensus standards that personal protective equipment (PPE) must meet if purchased before a specified date. In addition, OSHA is amending a provision that requires safety shoes to comply with a specific American National Standards Institute (ANSI) standard and a provision that requires filter lenses and plates in eye-protective equipment to meet a test for transmission of radiant energy specified by another ANSI standard. The final rule does not impose any new substantive requirements. This action is being taken as part of a continuation of OSHA's efforts to update references to national consensus standards in the regulations. The amendments add no new compliance obligations. Employers are not required to update or replace their PPE solely as a result of this rulemaking if the PPE in use currently meets the existing standards. The amendments simply update references to the national consensus standards as they apply to PPE. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: In Section 1, this administrative regulation defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. Part 1910. Section 2 also updates the C.F.R. to July 1, 2009, and, establishes the amendment to 29 C.F.R. 1910.6 as published in the September 9, 2009 Federal Register, Volume 74, Number 173, which incorporates references to national consensus standards.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this regulation because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: OSHA is updating references to national consensus standards and deleting only those references to which OSHA believes employers can no longer find PPE that complies with the outdated national consensus standard references, therefore, it is believed that the amendments do not add requirements of the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the regulation does not add compliance requirements, no additional costs in paperwork or training are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA determined that with full compliance under the final rule, no future injuries or fatalities are expected to occur.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no cost on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amend-

ment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government which is covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost as it does not require an employer to update or replace its PPE solely as a result of this final rule if the PPE currently in use meets the existing standards.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost as it does not require an employer to update or replace its PPE solely as a result of this final rule if the PPE currently in use meets the existing standards.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: Nonapplicable

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:306. Occupational health and environmental controls.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1910.6, 1910.94-1910.98[~~, EO 2009-537~~]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[~~, EO 2009-537~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.94-1910.98 establishes federal requirements relating to occupational noise exposure. [~~EO 2009-537, effective June 12, 2009, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor.~~] This administrative regulation establishes the occupational health and environmental control standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(5) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation and the requirements established in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and the Records Services, General Services Administration:

(1) 29 C.F.R. 1910.94-1910.98 and Appendices, revised July 1, 2009[~~2008~~]; and

(2) The amendment to 29 C.F.R. 1910.94[~~1910.95~~] published in the September 9, 2009, Federal Register, Volume 74, Number 173[~~December 12, 2008, Federal Register, Volume 73, Number 240~~].

Section 3. Occupational Noise Exposure. (1) (a)The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(1).

(b) Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz shall be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests shall include 8,000 Hz.

(2)(a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(4).

(b) Audiometric examinations shall be administered in a room meeting the requirements listed in 29 C.F.R. 1910.95, Appendix D: Audiometric Test Rooms. If an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(3)(a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(5)(ii).

(b) Audiometer calibration shall be checked acoustically at least annually in accordance with subsection (7)(b) of this section:

Acoustic Calibration of Audiometers.

1. Test frequencies below 500 Hz and above 8,000 Hz may be omitted from this check.

2. Deviations of fifteen (15) decibels or greater shall require an exhaustive calibration.

(4)(a)The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(5)(iii).

(b) An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz may be omitted from this calibration.

(5)(a)The language relating to access to information and training materials requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(l)(1).

(b) The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(6)(a) The language relating to exemptions to the regulation for occupational noise exposure requirements in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(o).

(b) 29 C.F.R. 1910.95(c) through (n) and subsections (1) through (5) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(7)(a) The language relating to acoustical calibration of audiometers for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95, Appendix E.

(b) Acoustic Calibration of Audiometers.

1. Subparagraphs 2 through 5 of this paragraph shall be mandatory.

2. Audiometer calibration shall be checked acoustically, at least annually, according to the procedures established in subparagraphs 2 through 5 of this paragraph.

a. The equipment necessary to perform these measurements shall be a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler.

b. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

3. Sound pressure output check.

a. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

b. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

c. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz for each earphone.

d. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2 of this administrative regulation, as appropriate for the type of earphone, in the column entitled "sound level meter reading".

4. Linearity check.

a. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

b. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

c. For each ten (10) dB decrement on the audiometer the sound level meter shall indicate a corresponding ten (10) dB decrease.

d. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

5.a. Tolerances. If any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 of this administrative regulation plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, the employer shall consider conducting an exhaustive calibration.

b. The employer shall conduct an exhaustive calibration if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES		
Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter level meter reading dB
500	11.5	81.5
1000	7.07	77.0
2000	9.07	79.0
3000	10.0	80.0
4000	9.57	79.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-49 EARPHONES		
Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter level meter reading dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

J.R. GRAY, Chairman

APPROVED BY AGENCY: June 2, 2010

FILED WITH LRC: June 4, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Kristi Redmon, Health Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. Part 1910. Section 2 also updates the C.F.R. to July 1, 2009; and, establishes the amendment to 29 C.F.R. 1910.94, published in the September 9, 2009 Federal Register, Volume 74, Number 173, which updates references to national consensus standards and amends provisions related to safety toe footwear. Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This administrative regulation requires that audiometric tests and equipment include the 8,000 Hz. frequency, which the federal regulation does not. This provision has been in place since December 15, 1989. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. As a result of the adoption of the final rule published in the September 9, 2009 Federal Regis-

ter, 803 KAR 2:306 must be amended to include the adopted changes. OSHA is updating the references in its regulations to recognize more recent editions of the applicable national consensus standards, and is deleting editions of the national consensus standards that personal protective equipment (PPE) must meet if purchased before a specified date. In addition, OSHA is amending its provision that requires safety shoes to comply with a specific American National Standards Institute (ANSI) standard and a provision that requires filter lenses and plates in eye-protective equipment to meet a test for transmission of radiant energy specified by another ANSI standard. The final rule does not impose any new substantive requirements. This action is being taken as part of a continuation of OSHA's efforts to update references to national consensus standards in the regulations. The amendments add no new compliance obligations. Employers are not required to update or replace their PPE solely as a result of this rulemaking if the PPE in use currently meets the existing standards. The amendments simply update references to the national consensus standards as they apply to PPE. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 1, defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. Part 1910. Section 2 also updates the C.F.R. to July 1, 2009; and, establishes the amendment to 29 C.F.R. 1910.94, published in the September 9, 2009 Federal Register, Volume 74, Number 173, which updates references to national consensus and industry standards and amends provisions related to safety toe footwear. Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This administrative regulation requires that audiometric tests and equipment include the 8,000 Hz. frequency, which the federal regulation does not. This provision has been in place since December 15, 1989.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this regulation because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: OSHA is updating references to national consensus standards and deleting only those references to which OSHA believes employers can no longer find PPE that complies with the outdated national consensus standard references, therefore, it is believed that the amendments do not add requirements of the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the regulation does not add compliance requirements, no additional costs in paperwork or training are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA determined that with full compliance under the final rule, no future injuries or fatalities are expected to occur.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no cost on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements,

than those required by the federal mandate? Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This administrative regulation requires that audiometric tests and equipment include the 8,000 Hz. frequency, which the federal regulation does not. This provision has been in place since December 15, 1989. This current amendment to the regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The provision in Section 3 of this administrative regulation which requires that audiometric tests and equipment include the 8,000 Hz. frequency has been in place since December 15, 1989. The purpose for the inclusion of the 8,000 Hz. frequency is in order to comply with the International Standards Organization (ISO) standard 6189-1983, "Acoustics -- Pure tone air conduction threshold audiometry for hearing conservation purposes." This current amendment to the regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government which is covered by KRS Chapter 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost as it does not require an employer to update or replace its PPE solely as a result of this final rule if the PPE currently in use meets the existing standards.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost as it does not require an employer to update or replace its PPE solely as a result of this final rule if the PPE currently in use meets the existing standards.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: Nonapplicable

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety
and Health Education and Training
(Amendment)

803 KAR 2:308. Personal protective equipment.

RELATES TO: 29 C.F.R. 1910.132-1910.138

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[~~, EO 2009-537~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt occupational safety and health administrative regulations. 29 C.F.R. 1910.132 to 1910.138 and Appendices establish the federal requirements relating to personal protective equipment. [~~EO 2009-537, effective June 12, 2009, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor.~~] This administrative regulation establishes personal protective equipment standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

(4) "Established federal standard" is defined in KRS 338.015(10).

(5) "National consensus standard" is defined in KRS 338.015(9).

(6) "Standard" is defined in KRS 338.015(3).

(7) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.132 through 29 C.F.R. 1910.138, and Appendices, revised July 1, 2009[~~2008~~]; and

(2) The amendment to 29 C.F.R. 1910.133, 1910.135, and 1910.136[~~1910.134~~] as published in the September 9, 2009 Federal Register, Volume 74, Number 173[~~December 12, 2008 Federal Register, Volume 73, Number 240~~].

J.R. GRAY, Chairman

APPROVED BY AGENCY: June 2, 2010

FILED WITH LRC: June 4, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Kristi Redmon, Health Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: In Section 1, this administrative regulation defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. Part 1910. Section 2 also updates the C.F.R. to July 1, 2009, and, establishes the amendment to 29 C.F.R. 1910.133, 1910.135, and 1910.136, as published in the September 9, 2009 Federal Register, Volume 74, Number 173, which updates references to national consensus standards and amends provisions related to safety toe footwear and filter lenses and plates for eye protective equipment. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. As a result of the adoption of the final rule published in the September 9, 2009 Federal Register, 803 KAR 2:308 must be amended to include the adopted changes. OSHA is updating the references in its regulations to recognize more recent editions of the applicable national consensus standards and is deleting editions of the national consensus standards that personal protective equipment (PPE) must meet if purchased before a specified date. In addition, OSHA is amending its provision that requires safety shoes to comply with a specific American National Standards Institute (ANSI) standard and a provision that requires filter lenses and plates in eye-protective equipment to meet a test for transmission of radiant energy specified by another ANSI standard. The final rule does not impose any new substantive requirements. This action is being taken as part of a continuation of OSHA's efforts to update references to national consensus standards in the regulations. The amendments add no new compliance obligations. Employers are not required to update or replace their PPE solely as a result of this rulemaking if the PPE in use currently meets the existing standards. The amendments simply update references to the national consensus standards as they apply to PPE. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: In Section 1, this administrative regulation defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. Part 1910. Section 2 also updates the C.F.R. to July 1, 2009, and, establishes the amendment to 29 C.F.R. 1910.133, 1910.135, and 1910.136, as published in the September 9, 2009 Federal Register, Volume 74, Number 173, which updates references to national consensus standards and amends provisions related to safety toe footwear and filter lenses and plates for eye protective equipment.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this regulation because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: OSHA is updating references to national consensus standards and deleting only those references to which OSHA believes employers can no longer find PPE that complies with the outdated national consensus standard references, therefore, it is believed that the amendments do not add requirements of the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the regulation does not add compliance requirements, no additional costs in paperwork or training are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA determined that with full compliance under the final rule, no future injuries or fatalities are expected to occur.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no cost on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the

requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to the regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment to the regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government which is covered by KRS Chapter 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost as it does not require an employer to update or replace its PPE solely as a result of this final rule if the PPE currently in use meets the existing standards.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost as it does not require an employer to update or replace its PPE solely as a result of this final rule if the PPE currently in use meets the existing standards.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: Nonapplicable

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety
and Health Education and Training
(Amendment)

803 KAR 2:316. Welding, cutting, and brazing.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.251 -1910.255

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.251 to 1910.255 establishes the federal requirements relating to welding, cutting, and brazing. [~~EO 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor.~~] This administrative regulation establishes the welding, cutting, and brazing standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined in KRS 338.015(2).

(5) "Employer" is defined in KRS 338.015(1).

(6) "Standard" is defined in KRS 338.015(3).

(7) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.251-1910.255, revised July 1, 2009; and

(2) The revisions to 29 C.F.R. 1910.252 as published in September 9, 2009 Federal Register, Volume 74, Number 173[~~2008~~].

J.R. GRAY, Chairman

APPROVED BY AGENCY: June 2, 2010

FILED WITH LRC: June 4, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Kristi Redmon, Health Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: In Section 1, this administrative regulation defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. Part 1910. Section 2 also updates the C.F.R. to July 1, 2009, and, establishes the amendment to 29 C.F.R. 1910.252 as published in the September 9, 2009 Federal Register, Volume 74, Number 173, which amends the requirements for filter lenses in protective eyewear. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. As a result of the adoption of the final rule published in the September 9, 2009 Federal Register, 803 KAR 2:316 must be amended to include the adopted changes. OSHA is updating the references in its regulations to recognize more recent editions of the applicable national consensus standards and is deleting editions of the national consensus standards that personal protective equipment (PPE) must meet if purchased before a specified date. In addition, OSHA is amending its provision that requires safety shoes to comply with a specific American National Standards Institute (ANSI) standard and a provision that requires filter lenses and plates in eye-protective equipment to meet a test for transmission of radiant energy specified by another ANSI standard. The final rule does not impose any new substantive requirements. This action is being taken as part of a continuation of OSHA's efforts to update references to national consensus standards in the regulations. The amendments add no new compliance obligations. Employers are not required to update or replace their PPE solely as a result of this rulemaking if the PPE in use currently meets the existing standards. The amendments simply update references to the national consensus standards as they apply to PPE. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: In Section 1, this administrative regulation defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. Part 1910. Section 2 also updates the C.F.R. to July 1, 2009, and, establishes the amendment to 29 C.F.R. 1910.252 as published in the September 9, 2009 Federal Register, Volume 74, Number 173, which amends references to consensus standards related to filter lens requirements in protective eyewear.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this regulation because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: OSHA is updating references to national consensus standards and deleting only those references to which OSHA believes employers can no longer find PPE that complies with the outdated national consensus standard references, therefore, it is believed that the amendments do not add requirements of the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the regulation does not add compliance requirements, no additional costs in paperwork or training are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA determined that with full compliance under the final rule, no future injuries or fatalities are expected to occur.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no cost on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effec-

tive as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government which is covered by KRS Chapter 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost as it does not require an employer to update or replace its PPE solely as a result of this final rule if the PPE currently in use meets the existing standards.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost as it does not require an employer to update or replace its PPE solely as a result of this final rule if the PPE currently in use meets the existing standards.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: Nonapplicable

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety
and Health Education and Training
(Amendment)

803 KAR 2:320. Toxic and hazardous substances.

RELATES TO: KRS 338.015, 338.031, 29 C.F.R. 1910.134, 1910.141, 1910.1000-1910-1450[~~, EO 2009-537~~]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[~~, EO 2009-537~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.1000 to 1910.1450 establish federal requirements relating to toxic and hazardous substances. [~~EO 2009-537, effective June 12, 2009, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor.~~] This administrative regulation establishes the toxic and hazardous substances standards to be enforced by the Department of Workplace Standards in the area of general industry.

Section 1. Definitions. (1) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) mu particles.

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(4) "Authorized employee" means an employee whose duties require the employee to be in the regulated area and who has been specifically assigned to that area by the employer.

(5) "Clean change room" means a room where employees put on clean clothing or protective equipment in an environment free of 4,4' Methylene bis (2-chloroaniline).

(6) "Closed system" means an operation involving 4, 4'-Methylene bis (2-chloroaniline) if containment prevents the release of 4,4' Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(7) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(8) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by the director or the Secretary of Health, Education, and Welfare to act for the director.

(9) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(10) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) that may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(11) "External environment" means any environment external to regulated and nonregulated areas.

(12) "Employee" is defined by KRS 338.015(2).

(13) "Employer" is defined by KRS 338.015(1).

(14) "Established federal standard" is defined by KRS 338.015(10).

(15) "Isolated system" means a fully enclosed structure, other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of containment occurs.

(16) "Laboratory type hood" means a device:

(a) Enclosed on three (3) sides with the top and bottom designed and maintained to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and

(b) Designed, constructed, and maintained so that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee's body other than hands and arms.

(17) "National consensus standard" is defined by KRS 338.015(9).

(18) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(19) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(20) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(21) "Regulated area" means an area where entry and exit is restricted and controlled.

(22) "Standard" means "occupational safety and health standards" as defined by KRS 338.015(3).

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section shall apply to any area in which 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144, is manufactured, processed, repackaged, released, handled, or stored. This section shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (4)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than one and zero-tenths (1.0) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. Those areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas if 4,4'-Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and

2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

1. Access shall be restricted to authorized employees only.

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be from ordinary work areas to the operation.

a. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

b. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 C.F.R. 1910.134. A respirator affording a higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains shall be prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall be:

1.Provided with and required to wear clean, impervious garments, including gloves, boots, and continuous-air supplied hood in accordance with 29 C.F.R. 1910.134;

2. Decontaminated before removing the protective garments and hood; and

3. Required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this paragraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures, and equipment that could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4.a. Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area.

b. The wastes and carcasses shall be incinerated so that no carcinogenic products are released.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section;

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, except for those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section; and

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in the surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

9. There shall not be a connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. If 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area shall not be required, except:

1. Only authorized employees shall be permitted to handle the materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment if leaving the work area at the end of the work day or if solution is spilled on the clothing or equipment. Used clothing and equipment shall be placed in impervious containers for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section;

4. Employees shall be required to wash hands and face after removing protective clothing and equipment and before engaging in other activities;

5. Employees assigned to work covered by this paragraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), and (c) of this section; and

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering; and

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification.

1. A daily roster of employees entering regulated areas shall be established and maintained.

2. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years.

3. The rosters or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director.

4. If the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures, including the requirements of this paragraph, shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency is determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3.a. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency.

b. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (5)(b) of this section.

4. If an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline), the employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (5)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or consumption of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of those products, shall be prohibited in regulated areas.

2. If employees are required by this section to wash, washing facilities shall be provided in accordance with 29 C.F.R. 1910.141.

3. If employees are required by this section to shower, facilities shall be provided in accordance with 29 C.F.R. 1910.141(d)(3).

4. If employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 29 C.F.R. 1910.141(e), for the number of employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas.

a. Local exhaust ventilation may be used to satisfy this requirement.

b. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment, and the decontamination facility.

4. Dry sweeping and dry mopping shall be prohibited.

(4) Signs, information, and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
Authorized Personnel Only

2. Entrances to regulated areas containing operations established in subsection (2)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed
In this Area
Impervious Suit Including Gloves,
Boots, and Air-Supplied Hood
Required At All Times
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that shall be followed in entering and leaving a regulated area.

(b) Container contents identification.

1. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5, (f)7b, and (g)3 of this section that are accessible only to, and handled only by authorized employees, or by other employees trained in accordance with paragraph (e) of this subsection, may have contents identification limited to a generic or proprietary name, or other proprietary identification, or the carcinogen and percent.

2. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5, (2)(f)6b, (2)(f)7b, or (2)(g)3 of this section that are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e) of this subsection shall have contents identification that includes the full chemical name and Chemical Abstracts Service Registry number as listed in subsection (1)(a) of this section.

3. Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

4. Containers that have 4,4'-Methylene bis (2-chloroaniline) contents with corrosive or irritating properties shall have label statements warning of the hazards, and noting, if appropriate, particularly sensitive or affected portions of the body.

(c) Lettering.

1. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches.

2. Labels on containers required by paragraph (b) of this subsection shall:

a. Not be less than one-half (1/2) the size of the largest lettering on the package, up to a maximum required size of one (1) inch in height; and

b. Not use less than eight (8) point type.

(d) Prohibited statements. A statement shall not appear on or near any required sign, label, or instruction that contradicts or detracts from the effect of any required warning, information, or instruction.

(e) Training and indoctrination.

1. Each employee, prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) that could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application of decontamination practices and procedures;

e. The purpose for and significance of emergency practices and procedures;

f. The employee's specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations that may result in the release of 4,4'-Methylene bis (2-chloroaniline); and

h. The purpose for and application of specific first-aid procedures and practices.

2. Each employee shall receive a review of this section at the employee's first training and indoctrination program and annually thereafter.

3. Specific emergency procedures shall be prescribed and posted, and employees shall be familiarized with their terms and rehearsed in their application.

4. All materials relating to the program shall be provided if requested by authorized representatives of the assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1 of each year, the information required by this paragraph shall be reported in writing by the employer to the nearest Area Director. Any change in the reported information shall be reported in writing within fifteen (15) calendar days of the change. The report shall contain the following information:

1. A brief description and in-plant location of the areas regulated and the address of each regulated area;

2. The names and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area;

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area, such as whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(b) Incidents. Incidents that result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this paragraph.

1. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest Area Director.

2. A written report shall be filed with the nearest Area Director within fifteen (15) calendar days of the initial report and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

b. A description of the area involved, and the extent of known and possible employee and area contamination;

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical examinations. Records shall be maintained for the duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor; records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director. If requested by an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016.

(1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that carcinogenic products shall not be released.

(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

(b)1. Prior to each exit from a regulated area, required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal.

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities; and

(d) Required to shower after the last exit of the day.

(8) Employees, except for those engaged only in animal support activities, each day shall be:

(a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

(b)1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal.

2. The contents of the impervious containers shall be identified

as required under Section 2(4)(b), (c), and (d) of this administrative regulation; and

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities.

(9) Air pressure in laboratory areas, and animal rooms where chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

(10) There shall not be a connection between regulated areas and any other areas through the ventilation system.

(11) A current inventory of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be maintained.

(12) Ventilated apparatus such as laboratory-type hoods shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(i).

(2) If an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why that time is unreasonable or impractical.

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(iii).

(4) If an employee or designated representative requests a copy of a record, the employer shall, except as specified in 29 C.F.R. 1910.1020(e)(1)(v) of this section, within the period of time previously specified assure that either:

(a) A copy of the record is provided without cost to the employee or representative;

(b) The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

(c) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

Section 5. (1) The language relating to gloves in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1030(d)(3)(ix);

(2) Gloves shall be worn if it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin if performing vascular access procedures or if handling or touching contaminated items or surfaces.

Section 6. Except as modified by Sections 1 through 5 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.1000 - 1910.1450, revised July 1, 2009; and[~~2008.~~]

(2) The amendments to 29 C.F.R. 1910.1026 published in the March 17, 2010, Federal Register, Volume 75, Number 51, and confirmed in the May 14, 2010, Federal Register, Volume 75, Number 93[~~1910.1001, 1910.1003, 1910.1017, 1910.1018, 1910.1025, 1910.1026, 1910.1027, 1910.1028, 1910.1029, 1910.1030, 1910.1043, 1910.1044, 1910.1045, 1910.1047, 1910.1048, 1910.1050, 1910.1051, and 1910.1052, published in the December 12, 2008, Federal Register, Volume 73, Number 240~~].

J.R. GRAY, Chairman

APPROVED BY AGENCY: June 2, 2010

FILED WITH LRC: June 4, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Kristi Redmon, Health Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements on employers related to the use of 4,4'-Methylene bis (2-Chloroaniline), which the federal regulation does not. This provision has been in place since February 12, 1996. Section 3 of this administrative regulation carriers requirements which are stricter than those required by OSHA. This section places requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. This provision has been in place since February 12, 1996. Section 4 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to access to exposure or medical records. This provision has been in place since July 17, 1997. Section 5 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to glove use as it applies to 29 C.F.R. 1910.1030. This provision has been in place since October 7, 1992. Section 6 requires employer in general industry to comply with the requirements of 29 C.F.R. 1910. Section 6 also updates the C.F.R. to July 1, 2009 and establishes the amendments to 29 C.F.R. 1910.1026 published in the March 17, 2010 Federal Register, Volume75, Number 51, and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards. As a result of the adoption of the direct final rule published in the March 17, 2010 Federal Register, and confirmed in the May 14, 2010 Federal Register, 803 KAR 2:320 must be amended to include the adopted changes. In 2006, OSHA published a final rule for Occupational Exposure to Hexavalent Chromium. Several parties had problems with the rule and one of the problems was related to the requirement for notifying employees of their exposure to hexavalent chromium. All problems were taken to the Court of Appeals where the court determined that OSHA must provide an explanation for its employee notification requirement or take other appropriate action. After reviewing the matter, OSHA decided to revise the notification requirements by means of a direct final rule. With this rule, OSHA's employee notification requirements, which originally required the employer to notify affected employees of any exposure determinations in excess of the permissible exposure limit of 5 micrograms, are being changed to require employers to notify affected employees of all exposure determinations, whether they are above or below the permissible exposure limit. The amendment to the exposure notification requirements will align the Hexavalent Chromium standards with similar requirements in other expanded health standards. Finally, this amendment updates this

administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2010 confirmation of the effective date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:320 was adopted by the Kentucky OSH Standards Board on May 4, 2010, pending the publication of the confirmation of the effective date of the final rule.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 1 defines terms not found in the federal standard. Section 2 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements on employers related to the use of 4,4'-Methylene bis (2-Chloroaniline), which the federal regulation does not. This provision has been in place since February 12, 1996. Section 3 of this administrative regulation carriers requirements which are stricter than those required by OSHA. This section places requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. This provision has been in place since February 12, 1996. Section 4 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to access to exposure or medical records. This provision has been in place since July 17, 1997. Section 5 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to glove use as it applies to 29 C.F.R. 1910.1030. This provision has been in place since October 7, 1992. Section 6 requires employer in general industry to comply with the requirement of 29 C.F.R. 1910. Section 6 also updates the C.F.R. to July 1, 2009 and establishes the amendments to 29 C.F.R. 1910.1026 published in the March 17, 2010 Federal Register, Volume75, Number 51, and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2010 confirmation of the effective date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:320 was adopted by the Kentucky OSH Standards Board on May 4, 2010 pending the publication of the confirmation of the effective date of the final rule.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment requires employers to notify employees of all exposure determinations made as required by the Hexavalent Chromium standards. This amendment does not require employers to conduct exposure determinations where they were not already required by the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA provides that this final rule will increase notification costs by 1.5 million dollars to employers. The amendment will simply require the employer to post more names or send more individual notices after exposure determinations are made. No information was available specific to this state.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplace.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2010 confirmation of the effective date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:320 was adopted by the Kentucky OSH Standards Board on May 4, 2010 pending the publication of the confirmation of the effective date of the final rule.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2010 confirmation of the effective date of the final rule.

Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:320 was adopted by the Kentucky OSH Standards Board on May 4, 2010 pending the publication of the confirmation of the effective date of the final rule.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? OSHA provides that this final rule will increase notification costs by 1.5 million dollars to employers. No information was available specific to this state.

(d) How much will it cost to administer this program for subsequent years? OSHA provides that this final rule will increase notification costs by 1.5 million dollars to employers. No information was available specific to this state.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanation: OSHA provides that this final rule will increase notification costs by 1.5 million dollars to employers. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety
and Health Education and Training
(Amendment)

803 KAR 2:425. Toxic and hazardous substances.

RELATES TO: 29 C.F.R. 1926.1101-1926.1152[~~, EO 2009-537~~]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[~~, EO 2009-537~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.1101 to 1926.1152 establish the federal requirements relating to toxic and hazardous substances. [~~EO 2009-537, effective June 12, 2009, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor.~~] This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in the construction industry.

Section 1. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1101 through 1926.1152, revised as of July 1, 2009; and[~~2008.~~]

(2) The amendments to 29 C.F.R. 1926.1126 published in the March 17, 2010, Federal Register, Volume 75, Number 51, and confirmed in the May 14, 2010, Federal Register, Volume 75, Number 93[~~1926.1101, 1926.1126, and 1926.1127 published in the December 12, 2008, Federal Register, Volume 73, Number 240~~].

J.R. GRAY, Chairman

APPROVED BY AGENCY: June 2, 2010

FILED WITH LRC: June 4, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Kristi Redmon, Health Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2009 and establishes the amendments to 29 C.F.R. 1926.1126 published in the March 17, 2010 Federal Register, Volume75, Number 51, and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards. As a result of the adoption of the direct final rule published in the March 17, 2010 Federal Register, and confirmed in the May 14, 2010 Federal Register, 803 KAR 2:425 must be amended to include the adopted changes. In 2006, OSHA published a final rule for Occupational Exposure to Hexavalent Chromium. Several parties had problems with the rule and one of the problems was related to the requirement for notifying employees of their exposure to hexavalent chromium. All problems were taken to the Court of Appeals where the court determined that OSHA must provide an explanation for its employee notification requirement or take other appropriate action. After reviewing the matter, OSHA decided to revise the notification requirements by means of a direct final rule. With this rule, OSHA's employee notification require-

ments, which originally required the employer to notify affected employees of any exposure determinations in excess of the permissible exposure limit of 5 micrograms, are being changed to require employers to notify affected employees of all exposure determinations, whether they are above or below the permissible exposure limit. The amendment to the exposure notification requirements will align the Hexavalent Chromium standards with similar requirements in other expanded health standards. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2010 confirmation of the effective date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:425 was adopted by the Kentucky OSH Standards Board on May 4, 2010, pending the publication of the confirmation of the effective date of the final rule.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 1 defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2009 and establishes the amendments to 29 C.F.R. 1926.1126 published in the March 17, 2010 Federal Register, Volume75, Number 51, and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2010 confirmation of the effective date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:425 was adopted by the Kentucky OSH Standards Board on May 4, 2010 pending the publication of the confirmation of the effective date of the final rule.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment requires employers to notify employees of all exposure determinations made as required by the Hexavalent Chromium standards. This amendment does not require employers to conduct exposure determinations where they were not already required by the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA provides that this final rule will increase notification costs by 1.5 million dollars to employers. The amendment will simply require the employer to post more names or send more individual notices after exposure determinations are made. No information was available specific to this state.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplace.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2010 confirmation of the effective date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:425 was adopted by the Kentucky OSH Standards Board on May 4, 2010 pending the publication of the confirmation of the effective date of the final rule.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2010 confirmation of the effective date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:425 was adopted by the Kentucky OSH Standards Board on May 4, 2010 pending the publication of the confirmation of the effective date of the final rule.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or

responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? OSHA provides that this final rule will increase notification costs by 1.5 million dollars to employers. No information was available specific to this state.

(d) How much will it cost to administer this program for subsequent years? OSHA provides that this final rule will increase notification costs by 1.5 million dollars to employers. No information was available specific to this state.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanation: OSHA provides that this final rule will increase notification costs by 1.5 million dollars to employers. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety
and Health Education and Training
(Amendment)

803 KAR 2:500. Maritime employment.

RELATES TO: KRS 338.015, 29 C.F.R. 1915, 1917, 1918, 1919[~~, EO 2009-537~~]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[~~, EO 2009-537~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. Parts 1915, 1917, 1918, and 1919 establish federal requirements relating to maritime employment. [~~EO 2009-537, effective June 12, 2009, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor.~~] This administrative regulation establishes maritime employment standards to be enforced by the Office of Occupational Safety and Health in the maritime industry.

Section 1. Definitions. (1) "Administration" means the Kentucky Labor Cabinet or Department of Workplace Standards.

(2) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet.

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the maritime industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. Part 1915, revised July 1, 2009[~~2008~~], relating to occupational safety and health standards for shipyard employment;

(2) 29 C.F.R. Part 1917, revised July 1, 2009[~~2008~~], relating to maritime terminals;

(3) 29 C.F.R. Part 1918, revised July 1, 2009[~~2008~~], relating to safety and health regulations for longshoring;

(4) 29 C.F.R. Part 1919, revised July 1, 2009[~~2008~~], relating to gear certification; and

(5) The revisions to 29 C.F.R. Parts 1915, 1917, and 1918, published in the September 9, 2009, Federal Register, Volume 74, Number 173; and

(6) The revisions to 29 C.F.R. 1915.1026, published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010, Federal Register, Volume 75, Number 93[~~The addition of section 29 C.F.R. 1918.5, as published in the December 12, 2008 Federal Register, Volume 73, Number 240~~].

J.R. GRAY, Chairman

APPROVED BY AGENCY: June 2, 2010

FILED WITH LRC: June 4, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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: Kristi Redmon, Health Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: In Section 1, this administrative regulation defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. Part 1910. Section 2 also updates the C.F.R. in Parts 1915, 1917, 1918, and 1919 to July 1, 2009, and, establishes the amendment to 29 C.F.R. Parts 1915, 1917, and 1918 as published in the September 9, 2009 Federal Register, Volume 74, Number 173, which incorporates references to national consensus standards. Additionally, Section 2 establishes the amendments to 29 C.F.R. 1915.1026, published in the March 17, 2010 Federal Register, Volume 75, Number 51 and

confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. As a result of the adoption of the final rules published in the aforementioned Federal Registers, 803 KAR 2:500 must be amended to include the adopted changes. OSHA is updating the references in its regulations to recognize more recent editions of the applicable national consensus standards and is deleting editions of the national consensus standards that personal protective equipment (PPE) must meet if purchased before a specified date. In addition, OSHA is amending its provision that requires safety shoes to comply with a specific American National Standards Institute (ANSI) standard and a provision that requires filter lenses and plates in eye-protective equipment to meet a test for transmission of radiant energy specified by another ANSI standard. The final rule does not impose any new substantive requirements. This action is being taken as part of a continuation of OSHA's efforts to update references to national consensus standards in the regulations. The amendments add no new compliance obligations. Employers are not required to update or replace their PPE solely as a result of this rulemaking if the PPE in use currently meets the existing standards. The amendments simply update references to the national consensus standards as they apply to PPE. In 2006, OSHA published a final rule for Occupational Exposure to Hexavalent Chromium. Several parties had problems with the rule and one of the problems was related to the requirement for notifying employees of their exposure to hexavalent chromium. All problems were taken to the Court of Appeals where the court determined that OSHA must provide an explanation for its employee notification requirement or take other appropriate action. After reviewing the matter, OSHA decided to revise the notification requirements by means of a direct final rule. With this rule, OSHA's employee notification requirements, which originally required the employer to notify affected employees of any exposure determinations in excess of the permissible exposure limit of 5 micrograms, are being changed to require employers to notify affected employees of all exposure determinations, whether they are above or below the permissible exposure limit. The amendment to the exposure notification requirements will align the Hexavalent Chromium standards with similar requirements in other expanded health standards. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendments to 29 C.F.R. Parts 1915, 1917, and 1918 published in the September 9, 2009 Federal Register, Volume 74, Number 173 did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. The amendment to 29 C.F.R. 1915.1026 published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards, is required to be adopted unless Kentucky has an effective alternative to the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:500 was adopted by the Kentucky OSH Standards Board on May 4, 2010, pending the publication of the confirmation of the effective date of the final rule.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: In Section 1, this administrative regulation defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. Part 1910. Section 2 also updates the C.F.R. in Parts 1915, 1917, 1918, and 1919 to July 1, 2009, and, establishes the amendment to 29 C.F.R. Parts 1915, 1917, and 1918 as published in the September 9, 2009 Federal Register, Volume 74, Number 173, which incorporates references to national consensus standards. Additionally, Section 2 establishes the amendments to 29 C.F.R. 1915.1026, published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendments to 29 C.F.R. Parts 1915, 1917, and 1918 published in the September 9, 2009 Federal Register, Volume 74, Number 173 did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. The amendment to 29 C.F.R. 1915.1026 published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards, is required to be adopted unless Kentucky has an effective alternative to the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:500 was adopted by the Kentucky OSH Standards Board on May 4, 2010, pending the publication of the confirmation of the effective date of the final rule.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this regulation because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all in the Commonwealth engaged in maritime industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: In the September 9, 2009 Federal Register, Volume 74, Number 173, OSHA is updating references to national consensus standards and deleting only those references which OSHA believes employers can no longer find PPE that complies with the outdated national consensus standard references, therefore, it is believed that the amendments do not add requirements of the employer. The amendments published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, require employers to notify employees of all exposure determinations made as required by the Hexavalent Chromium standards. This amendment does not require employers to conduct exposure determinations where they were not already required by the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA provides that this final rule published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, will increase notification costs by 1.5 million dollars to employers. The amendment will simply require the employer to post more names or send more individual notices after exposure determinations are made. No information was available specific to this state. The amendment published in the September 9, 2009 Federal Register, Volume 74, Number 173, does not add compliance requirements, therefore, no additional costs are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA determined that with full compliance under both final rules, no future injuries or fatalities are expected to occur.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no cost on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendments to 29 C.F.R. Parts 1915, 1917, and 1918 published in the September 9, 2009 Federal Register, Volume 74, Number 173 did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. The amendment to 29 C.F.R. 1915.1026 published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards, is required to be adopted unless Kentucky has an effective alternative to the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:500 was adopted by the Kentucky OSH Standards Board on May 4, 2010, pending the publication of the confirmation of the effective date of the final rule.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendments to 29 C.F.R. Parts 1915, 1917, and 1918 published in the September 9, 2009 Federal Register, Volume 74, Number 173 did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. To promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. The amendment to 29 C.F.R. 1915.1026 published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards, is required to be adopted unless Kentucky has an effective alternative to the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by November 14, 2010. The amendment to 803 KAR 2:500 was adopted by the Kentucky OSH Standards Board on May 4, 2010, pending the publication of the confirmation of the effective date of the final rule.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government which is covered by KRS Chapter 338 and engaged in maritime industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

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

year? For the amendments published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards, OSHA provides that this final rule will increase notification costs by 1.5 million dollars to employers. No information was available specific to this state. For the amendments published in the September 9, 2009 Federal Register, Volume 74, Number 173, OSHA provides that they will not impose any cost as it does not require an employer to update or replace its PPE solely as a result of this final rule if the PPE currently in use meets the existing standards.

(d) How much will it cost to administer this program for subsequent years? For the amendments published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards, OSHA provides that this final rule will increase notification costs by 1.5 million dollars to employers. No information was available specific to this state. For the amendments published in the September 9, 2009 Federal Register, Volume 74, Number 173, OSHA provides that they will not impose any cost as it does not require an employer to update or replace its PPE solely as a result of this final rule if the PPE currently in use meets the existing standards.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanation: For the amendments published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010 Federal Register, Volume 75, Number 93, which revises employee notification requirements in the exposure determination provisions of the Hexavalent Chromium standards, OSHA provides that this final rule will increase notification costs by 1.5 million dollars to employers. No information was available specific to this state. For the amendments published in the September 9, 2009 Federal Register, Volume 74, Number 173, OSHA provides that they will not impose any cost as it does not require an employer to update or replace its PPE solely as a result of this final rule if the PPE currently in use meets the existing standards.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of Mine Safety and Licensing
(Amendment)

805 KAR 7:020. Training and certification of inexperienced miners.

RELATES TO: KRS 351.102, 351.105

STATUTORY AUTHORITY: KRS 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Office of Mine Safety and Licensing[~~Department of Mines and Minerals~~] to establish a program of training for inexperienced miners according to criteria and standards determined by the Mining Board. This administrative regulation establishes a program of training for inexperienced miners.

Section 1. Training and Certification of Inexperienced Miners. (1) A candidate desiring to obtain a permit as an inexperienced miner shall be at least eighteen (18) years of age, notwithstanding KRS 339.230, prior to enrolling in an inexperienced miner class. The required trainee miner training shall be documented and include the following information:

(a) Full name of person trained;

(b) Miner identification number;

(c) Type of mining operation;

(d) Type of training received;

(e) Date training completed;

(f) Subjects taught in that training;

(g) Signature of instructor;

(h) Signature of miner; [~~and~~]

(i) Documentation providing proof the trainee is at least eighteen (18) years of age; and

(j) Date of signatures. The documentation shall be embossed with the instructor's seal and embossed copy shall be provided to the miner.

(2)(a) The certificate earned by completing the trainee miner training program shall be valid for twelve (12) months preceding initial employment at a mine.

(b) If employment is not obtained within twelve (12) months, annual retraining requirements shall be successfully completed each year in order to maintain the trainee miner permit.

Section 2. Training Program. The training program for inexperienced miners shall include instruction in the following courses:

(1) Introduction to mining;

(2) Self-rescue devices;

(3) The statutory rights of miners and their representatives;

(4) Authority and responsibility of supervisors;

(5) Entering and leaving a mine, transportation, and communication;

(6) Mine map, escapeways, emergency evacuations, barricading;

(7) Roof or ground control and ventilation plans;

(8) Health standards;

(9) Clean-up and rock dusting;

(10) Hazard recognition;

(11) Electrical hazard;

(12) First aid;

(13) Mine gases and explosives;

(14) Accident prevention; and

(15) Mining and mine safety related issue.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 25, 2010

FILED WITH LRC: May 27, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2010. At Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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 an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 2, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Johnny Greene, Executive Director, Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0140, fax (502) 573-0152, email Johnny.Greene@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Johnny Greene, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program of training for inexperienced miners.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the training program for inexperienced miners.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.102 and 351.106 require the Office of Mine Safety and Licensing to establish a program of training for inexperienced miners according to criteria and standards

determined by the Mining Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides important details as to the makeup of the inexperienced miner training program.

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

(a) How the amendment will change this existing administrative regulation: This amendment will ensure that a candidate desiring to obtain a permit as an inexperienced miner be at least eighteen (18) years of age prior to enrolling in an inexperienced miner class.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that candidates desiring to obtain a permit as an inexperienced miner are at least eighteen (18) years of age.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying that individuals must be over the age of eighteen (18) prior to taking entering the inexperienced miner program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides necessary detail as to who qualifies for the inexperienced miner program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact only those individuals that are applying to enter the inexperienced miner training program that are under the age of eighteen (18).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will simply not be able to enter the inexperienced miner program until they reach the age of eighteen(18).

(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 costs associated with complying with this amendment to the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation the impacted entities will be in compliance with applicable state labor laws.

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

(a) Initially: There will be no costs to the administrative body with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the administrative body with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be General Funds.

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

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

(9) TIERING: Is tiering applied? No. The same standards will apply to every entity listed in question (3) above.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Mine Safety and Licensing will be minimally impacted by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.102 and 351.106 require the Office of Mine Safety and Licensing to establish a program of training for inexperienced miners. This amendment provides detail regarding eligibility.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will neither increase the revenues nor the expenditures of the agency.

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

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

(c) How much will it cost to administer this program for the first year? There is not a cost associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is not a cost associated with this administrative regulation.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of Mine Safety and Licensing
(Amendment)

805 KAR 8:060. Criteria for the imposition and enforcement of sanctions against licensed premises.

RELATES TO: KRS 351.010(1)(m), 351.025, 351.1041, 351.175, 351.194, 352.010-352.550[~~, EO 2009-0538~~]

STATUTORY AUTHORITY: KRS 351.025(2), 351.070(13), 351.070(15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Energy and Environment[~~Environmental and Public Protection~~] Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS 351.025(2) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission's imposition of penalties against licensed premises for violations of Kentucky mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) requires the Cabinet to promulgate administrative regulations providing for the manner and method of assessing penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions and mine ventilation plans that could lead to imminent danger or serious physical injury. [~~EO 2009-0538, effective June 12, 2009, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet.~~] This administrative regulation establishes the criteria for the revocation, suspension, or probation of a mine's license, and the imposition of civil monetary penalties against a licensed premises.

Section 1. Definitions. (1) "Commission" means the Mine Safety Review Commission.

(2) "First offense" means the first violation by a licensed pre-

mises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including:

(a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);

(b) The violation of a roof control plan, mine seal construction plans, or mine ventilation plan; or

(c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury.

(3) "Licensed facility" or "licensed premises" means "licensee", as defined by KRS 351.010(1)(o) and 352.010(1)(s).

(4) "Mine ventilation plan" means the ventilation plan, including any revisions as approved by the United States Mine Safety and Health Administration.

(5) "Related successor" means an entity that obtains a license for a mine, if that entity is linked by common legal or equitable ownership through one (1) or more owners, to a previous licensee for that same mine or location.

(6) "Second offense" means the second violation by a licensed premises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including:

(a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);

(b) The violation of a roof control plan, mine seal construction plans, mine ventilation plan;

(c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury.

(7) "Subsequent offense" means a violation beyond the third offense by a licensed premises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including:

(a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);

(b) The violation of a roof control plan, mine seal construction plans, mine ventilation plan;

(c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury.

(8) Third offense" means the third violation by a licensed premises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including:

(a) Failure to comply with the reporting requirements established in KRS 352.180(1);

(b) The violation of a roof control plan, mine seal construction plans, mine ventilation plan; or

(c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury.

(9) "Unsafe working conditions" means a condition that involves a hazard that:

(a) Can reasonably be expected to cause a miner serious injury or death;

(b) A foreman, superintendent or mine management was aware of or should have been aware of; and

(c) Was allowed to exist, without being corrected or addressed.

Section 2. Criteria for the Imposition and Enforcement of Sanctions Against Licensed Premises for Violations of Mine Safety Laws. (1)(a) If the Commission determines, pursuant to KRS 351.194, that a licensed premises has committed a first offense, the commission may place the licensed premises on probation for a period of time to be determined by the commission, pursuant to KRS 351.194(5), which shall be in proportion to the seriousness of the violations and the facts of the case.

(b) The commission may also impose a civil monetary penalty against the licensed premises, in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(2)(a) If a licensed premises is placed on probation for a first offense violation pursuant to subsection (1) of this section, the commission may impose the terms of the probation, and it may impose penalties for the violation of the terms of probation, including the suspension or revocation of the mine's license.

(b) If the licensed premises satisfies the terms of its probation, the probation shall automatically expire at the end of the probationary period.

(3)(a) The department may file charges against a licensed premises for any alleged violation of its probationary terms.

(b) Hearings regarding the allegations shall be conducted by the Kentucky Mine Safety Review Commission, pursuant to 825 KAR 1:020.

(4)(a) If the Commission determines, pursuant to KRS 351.194, that a licensed premises has committed a second offense, the commission may suspend or revoke the mine's license for a period of not less than two (2) calendar years, up to and including revocation, pursuant to KRS 351.194(5) and (6), and in proportion to the seriousness of the violations and the facts of the case.

(b) The commission may also impose a civil monetary penalty against the licensed premises, in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(5)(a) If a mine license is suspended for a second offense violation pursuant to subsection (4) of this section, it shall be automatically reinstated at the end of the period of suspension.

(b) If the mine's license is revoked, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

(c) The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with orders of the Mine Safety Review Commission and KRS 351.175.

(6)(a) Upon the adjudication by the Mine Safety Review Commission of a third offense by a licensed premises, the commission shall revoke the mine's license for a period of not less than three (3) calendar years, up to and including a permanent revocation without possibility of reinstatement, pursuant to KRS 351.194(5) and (6) and in proportion to the seriousness of the violations and the facts of the case.

(b) If the revocation is for a period of less than a permanent revocation without possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

(c) The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with orders of the Mine Safety Review Commission and KRS 351.175.

(d) If a third offense is committed by a licensed premises, the commission may also impose a civil monetary penalty against the licensed premises, in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(7)(a) If a licensed premises commits a violation of a mine safety law that results in the death of a miner, whether the violation is first or subsequent offense, the Mine Safety Review Commission may suspend or revoke the mine's license, including permanent revocation of the license without the possibility for reinstatement, pursuant to KRS 351.194(5) and (6) and in proportion to the seriousness of the violations and the facts of the case.

(b) If the commission suspends the mine's license, it shall be automatically reinstated at the end of the period of suspension.

(c) If the commission revokes the mine's license for a period of less than a permanent revocation possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

(d) The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with Orders of the Mine Safety Review Commission and KRS 351.175.

(e) The commission may also impose a civil monetary penalty against the licensed premises, in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(8) If a licensed premises that has committed one (1) or more violations pursuant to subsection (1), (4), (6), or (7) of this section is subsequently sold or goes out of business, penalties imposed on that licensed premises for those violations shall be imposed upon an entity that is determined by the commission to be a related successor to the licensed premises in question, after a hearing conducted pursuant to KRS 351.194.

Section 3. Criteria for the Imposition and Enforcement of Civil Penalties Against Licensed Facilities for Violations of Roof Control Plans, Mine Seal Construction Plans, Unsafe Working Conditions, or Mine Ventilation Plans. (1) Amount of penalty. The commissioner or the commissioner's designee shall assess monetary penalties to a licensed facility that has been issued a noncompliance or closure order for a violation of the provisions of KRS Chapters 351 and 352 relating to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that may lead to imminent danger or serious physical injury, or have resulted in serious physical injury or death, as follows:

(a) If the licensed facility has not had previous violations during the previous twenty-four (24) months relating to roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plans that may lead to imminent danger or serious physical injury, the penalty shall not be more than $2,500;

(b) If the licensed facility has had one prior offense during the previous twenty-four (24) months relating to the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in the assessment of a penalty pursuant to this section, the penalty for a violation that may lead to imminent danger or serious physical injury shall not be more than $4,000;

(c) If the licensed facility has had two (2) or more offenses relating to a violation during the previous twenty-four (24) months of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in an assessment of a penalty pursuant to this section, the penalty for a violation that may lead to imminent danger or serious physical injury shall not be more than $5,000;

(d) If the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan results in the serious physical injury or death of a miner, the penalty shall be $5,000, even if the licensed facility has been previously cited for the violation or assessed a penalty pursuant to this section; and

(e) Factors to be considered. In determining the amount of the penalty to be assessed, consideration shall be given to the following:

1. The licensed premises' cooperation with investigators;

2. The severity of the harm done, such as whether the violation resulted in:

a. Death;

b. Serious physical injury; or

c. The placement of an individual in imminent harm;

3. The licensed premises' acceptance of responsibility for its actions;

4. The licensed premises' history of violations;

5. [~~The licensed premises' adjudicated violations in other states;~~

~~6.~~] Mitigating circumstances; and

6.[~~7.~~] Aggravating circumstances.

(2) Notification. The commissioner or commissioner's designee shall notify a licensed facility that has been assessed a penalty pursuant to this section of the amount of the assessment.

(3) Service.

(a) The notice of proposed penalty assessment shall be served on the licensed facility within thirty (30) days after the proposed penalty assessment is completed.

(b) Failure to serve the proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of the assessment unless the licensee proves actual and substantial prejudice as a result of the delay.

(c) Service shall be made by one (1) or more of the following methods:

1.a. The commissioner or the commissioner's designee may place a copy of the notice of proposed assessment in an envelope and address the envelope to the licensed facility at the address provided by the licensee to the Office of Mine Safety and Licensing in its most recent license application.

b. The Office of Mine Safety and Licensing shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested.

c. The Office of Mine Safety and Licensing shall maintain a record of each assessment and shall include the fact of mailing and the return receipt, if received.

d. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

e. Service by certified mail shall be complete upon delivery of the envelope, upon acceptance by any person eighteen (18) years of age or older at the licensee address, upon refusal to accept by any person at the licensee address, upon the United States Postal Service's inability to deliver the assessment if properly addressed to the licensee, or upon failure to claim the assessment prior to its return to the Office of Mine Safety and Licensing by the United States Postal Service.

f. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the assessment; or

2. The commissioner or the commissioner's designee may cause the assessment, with necessary copies, to be transferred for service to a person authorized by the Secretary who shall serve the assessment, and the return thereon shall be proof of the time and manner of service.

(4) Options of the licensed facility issued a notice of proposed assessment.

(a) Waiver.

1. A licensed facility that is issued a notice of proposed assessment may choose not to contest the assessment.

2. Failure to file a petition pursuant to paragraph (b) of this subsection shall be considered a waiver.

3. A final order shall be entered by the Mine Safety Review Commission finding that:

a. The licensed facility has waived its right to an administrative hearing on the amount of the proposed assessment;

b. The fact of the violation cited in the noncompliance or closure order is deemed admitted;

c. The proposed penalty is due and payable within thirty (30) days after the entry of the final order; and

d. The violation is a first, second, third, or subsequent offense.

(b) Petition for administrative hearing. The licensed facility may contest the proposed assessment and fact of violation by submitting a petition for administrative hearing within thirty (30) days of the receipt of the assessment in accordance with 825 KAR 1:020.

(5) This section of this administrative regulation shall be construed to impair or contravene the Office of Mine Safety and Licensing's authority to seek sanctions pursuant to Section 2 of this administrative regulation or to prevent the Mine Safety Review Commission from imposing the sanctions in Section 2 of this administrative regulation in addition to the monetary penalties assessed pursuant to this Section.

Section 4. Criteria for the Imposition and Enforcement of Sanctions Against Licensed Facilities For Failure to Comply with the Requirements for Reporting an Accident. (1) General.

(a) If the superintendent, mine manager, mine foreman, or a mine foreman's designee fails to comply with the reporting requirements established in KRS 352.180(1), the Mine Safety Review Commission may revoke, suspend or probate the mine license for a period of time to be determined by the commission, pursuant to KRS 351.194(5), and in proportion to the seriousness of the violations and the facts of the case.

(b) The commission shall also assess a civil monetary penalty against the licensed premises in accordance with KRS 352.180(4).

(2) Point system for computing the civil monetary penalty. The Mine Safety Review Commission shall apply the point system described in this subsection to evidence produced by the Office of Mine Safety and Licensing necessary to determine the amount of civil monetary penalty to assess against the licensee pursuant to this section. Points shall be assigned as follows:

(a) Appropriateness of the penalty.

1. Up to fifteen (15) points shall be assigned for the size of the mine.

2. The size of the mine shall be based on the tonnage produced from the mine in the previous calendar year, or in the case of a mine opened or owned less than one (1) full calendar year, the tonnage prorated to an annual basis.

3. Points shall be assigned as follows:

a. 0-300,000 tons, zero (0) points;

b. 300,000-500,000 tons, five (5) points;
c. 500,000-1 million tons, ten (10) points;
d. Over 1 million tons, fifteen (15) points;
(b) History of previous violations.
1. Up to twenty (20) points shall be assigned based on the history of violations at the mine, cited against the licensee during the preceding twenty-four (24) month period.
2. Points shall be assigned as follows:
a. 1-5 previous violations, zero points;
b. 6-10 previous violations, five (5) points;
c. 11-20 previous violations, ten (10) points;
d. 21-30 previous violations, fifteen (15) points;
e. Over 30 previous violations, twenty (20) points;
(c) Negligence.
1. Up to twenty-five (25) points shall be assigned based on the degree of negligence the licensee exhibited in failing to report the accident.
2. Points shall be assigned as follows:
a. No negligence. There shall not be negligence on the part of the licensee if it exercised diligence and could not have prevented the failure to comply with the reporting requirements. Zero points shall be assigned for no negligence;
b. Negligence. There shall be negligence if the licensee has mitigating circumstances for its failure to comply with the reporting requirements. Fifteen (15) points shall be assigned for negligence; or
c. Reckless disregard. There shall be reckless disregard if the licensee exhibits the absence of the slightest degree of care in complying with the reporting requirements. Twenty- five (25) points shall be assigned for reckless disregard;
(d) Gravity. Gravity shall be the severity of the accident and whether persons were at risk of serious physical injury or death based on the failure to comply with the reporting requirements.
1. A total of thirty (30) points shall be assigned for gravity.
2. Points shall be assigned as follows:
a. Severity. Up to twenty (20) points shall be assigned as follows for the severity of injuries:
(i) No serious physical injury occurred, zero points;
(ii) A serious physical injury occurred, ten (10) points; or
(iii) A fatality occurred, twenty (20) points; and
b. Persons at risk of serious physical injury or death. Up to ten (10) points shall be assigned based on whether persons were at risk of serious physical injury or death by the failure to comply with the reporting requirements, and points shall be assigned as follows:
(i) Personnel were not at risk, zero points; or
(ii) A person was at risk, ten (10) points.
(3) Determination of amount of penalty. The Mine Safety Review commission shall determine the amount of penalty by converting the total number of points assigned under subsection (2) of this section to a dollar amount, according to the schedule in the following table:

POINTS	AMOUNT
0	$10,000
5	$15,000
10	$20,000
15	$25,000
20	$30,000
25	$35,000
30	$40,000
35	$45,000
40	$50,000
45	$55,000
50	$60,000
55	$65,000
60	$70,000
65	$75,000
70	$80,000
75	$85,000
80	$90,000
85	$95,000
90	$100,000

(4) Waiver of use of point system to determine civil penalty.

(a)1. The Mine Safety Review Commission may waive the use of the point system contained in Section 4(2) of this administrative regulation to set the civil penalty, if it determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.
2. The basis for every waiver shall be fully explained and documented in the record of the case.
(b)1. If the commission waives the use of the point system, it shall use the criteria established in KRS 351.194(7) to determine the appropriate penalty.
2. If the commission has elected to waive the use of the point system, it shall give a written explanation for the basis for the assessment made in its Final Order.

Section 5. Incorporation by Reference. (1) "Notice of Proposed Assessment," July 12, 2006, OMSL Form No. NPA-1 is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: May 25, 2010
FILED WITH LRC: May 27, 2010 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2010 at 10 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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 an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 2, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Johnny Greene, Executive Director, Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0140, fax (502) 573-0152, email: Johnny.Greene@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Johnny Greene, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes the imposition of sanctions, including civil monetary penalties against licensees for violations of mine safety laws that create an imminent danger of serious physical injury or death.
(b) The necessity of this administrative regulation: Imposition of civil monetary penalties against licensees for non-intentional violations of mine safety laws pertaining to mine seal construction plans and unsafe working conditions.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.025(2) authorizes the Department for Natural resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing civil monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or

serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statues.

(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 removes adjudicated violations in other states as a determining factor in the amount of the penalty to be assessed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove adjudicated violations in other states as a factor in determining the amount of the penalty to be assessed. This provision is obsolete and no longer a factor in determining the amount of the penalty.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 351.025(2) authorizes the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. This amendment removes adjudicated violations in other states as a factor in determining the amount of the penalty to be assessed.

(d) How the amendment will assist in the effective administration of the statutes: This amendment removes adjudicated violations in other states as a factor in determining the amount of the penalty to be assessed. This provision was not used because the Commonwealth does not have the ability to accurately determine the safety violations from other states.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals that violate the provisions of this administrative regulation and are assessed with a penalty will be impacted by the provisions of this administrative regulation and the proposed amendments.

(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 from question (3) will not be required to take additional actions in order to comply with this amendment. This amendment is simply removing the adjudicated violations in other states as a factor in determining the amount of the penalty to be assessed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities that comply with mine safety laws will not be subject to any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will not have any direct benefits. This provision is currently not included in the penalty assessment because of the lack of available information.

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

(a) Initially: There are not costs associated with this amendment.

(b) On a continuing basis: There are not costs associated with this amendment.

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

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

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

(9) TIERING: Is tiering applied? No. This amendment will be applied to all entities in the same manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Mine Safety and Licensing and the Mine Safety Review Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.025(2) authorizes the Department for Natural resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing civil monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not affect 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? The deleted provision is not currently used. Therefore, there will be no change in the amount of penalty assessments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The deleted provision is not currently used. Therefore, there will be no change in the amount of penalty assessments.

(c) How much will it cost to administer this program for the first year? There are no costs associated with this amendment.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.215, EO 2009-535[~~2008-668~~]

STATUTORY AUTHORITY: KRS 230.215(2), 230.260, EO 2009-535[~~2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission[~~authority~~] to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260 authorizes the commission[~~authority~~] to promulgate administrative regulations that regu-

late conditions under which thoroughbred racing shall be conducted in Kentucky and to establish safety standards for jockeys. EO 2009-535[~~2008-668~~], effective June 12, 2009[~~July 3, 2008~~], 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 requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey, who has not ridden in a race previously, may ride in three (3) races before applying for a license as a jockey or apprentice jockey if:

(1) The person is a licensed stable employee, assistant trainer, or trainer with at least one (1) year of service with a racing stable;

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship, as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions, to be permitted the probationary mounts;

(3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;

(4) The stewards determine that the person:

(a) Intends to become a licensed jockey;

(b) Possesses the physical ability to be a jockey; and

(c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race; and

(5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 1:025, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;

(2) Shall have served at least one (1) year with a racing stable;

(3) Shall have ridden in at least three (3) races; and

(4) Shall, if required by the stewards, to protect the health and safety of the jockey, other jockeys, the horses, and the welfare of the betting public provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. (1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefore, shall:

(a) Be approved by the stewards as to competency of horsemanship, as demonstrated by meeting the requirements in Section 1(2), (3), and (4)(b) and (c) of this administrative regulation;

(b) Be granted an amateur jockey's license; and

(c) Have his amateur status duly noted on the daily race program.

(2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. (1) Any person sixteen (16) years of age or older, who has not been licensed previously as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

(a) Ten (10) pounds until he has ridden five (5) winners;

(b) Seven (7) pounds until he has ridden an additional thirty-five (35) winners;

(c) If he has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year; and

(d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year, or until the 40th winning mount whichever occurs first.

(2)(a) After the completion of conditions in subsection (1) of this section, a contracted apprentice may claim three (3) pounds for one (1) year if riding horses owned or trained by his original contract employer if his contract has not been transferred or sold since his first winner.

(b) The original contract employer shall be the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(c) Apprentice allowance shall not be claimed for a period in excess of two (2) years from the date of the rider's fifth winner unless an extension has been granted in accordance with subsection (4) of this section.

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years.

(a) These contracts shall be:

1. Approved by the stewards;

2. Filed with the commission; and

3. Binding in all respects on the parties to the contract.

(b) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate.

(4) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disablement, attendance in an institution of secondary or higher education, restrictions on racing, or other valid reason, the commission, upon recommendation of the stewards and after consultation with the racing entity which approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. (1) All contracts between an employer owner or trainer and employee rider shall be subject to 810 KAR Chapter 1.

(2) All riding contracts for terms longer than thirty (30) days, and any amendments, cancellation, or transfer, shall be in writing with the signatures of the parties notarized, and shall be approved by the stewards and filed with the commission.

(3) The stewards shall approve a riding contract and permit parties to participate in racing in this state if the stewards find that:

(a) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of the execution of the contract;

(b) The contract employer possesses the character, ability, facilities, and financial responsibility conducive to developing a competent race rider; and

(c) If it is a contract for an apprentice jockey, the contract provides for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from the date of execution.

Section 6. Restrictions as to Contract Riders. A rider shall not:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer; and

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. (1) Any rider not prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer.

(2) These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission.

(3) Any rider employed by a racing stable on a regular salaried

basis shall not ride against the stable which employs him.

(4) An owner or trainer shall not employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The fee to a jockey, in the absence of special agreement to the contrary, shall be as follows:

(a) Purse $599 and under: winning mount, $33; second place mount, $33; third place mount, $33; losing mount, $33.

(b) Purse $600 to $699: winning mount $36; second place mount, $33; third place mount, $33; losing mount, $33.

(c) Purse $700 to $1,499: winning mount, ten (10) percent of win purse; second place mount, $33; third place mount, $33; losing mount, $33.

(d) Purse $1,500 to $1,999: winning mount, ten (10) percent of win purse; second place mount, $35; third place mount, $33; losing mount $33.

(e) Purse $2,000 to $3,499: winning mount, ten (10) percent of win purse; second place mount, $45; third place mount, $40; losing mount, $38.

(f) Purse $3,500 to $4,999: winning mount, ten (10) percent of win purse; second place mount, $55; third place mount, $45; losing mount, $40.

(g) Purse $5,000 to $9,999: winning mount, ten (10) percent of win purse; second place mount, $65; third place mount, $50; losing mount, $45.

(h) Purse, $10,000 to $14,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $50.

(i) Purse, $15,000 to $24,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $55.

(j) Purse, $25,000 to $49,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $65.

(k) Purse, $50,000 to $99,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $80.

(l) Purse, $100,000 and up: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $105.

(2) A jockey fee shall be considered earned by a rider if he is weighed out by the clerk of scales, with the following exceptions:

(a) If a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for the race;

(b) If a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, reasonable cause; or

(c) If a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or the commission, after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards due to circumstances under which a jockey could not reasonably be expected to be physically present at the required time, A rider shall not be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards or the clerk of scales due to circumstances under which a jockey could not reasonably be expected to ride; and upon arrival shall report to the clerk of scales his engagements. If a rider fails for any reason to arrive in the jockey room no later than one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. While a rider is outside of the jockey room, a rider shall not have contact or communication with any person other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room to conduct specific business previously approved by the stewards so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and when weighing out, the rider shall declare overweight, if any.

(2)(a) A rider shall not pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; and

(b) A rider shall not pass the scale with more than five (5) pounds overweight.

(3) A horse shall not be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, rider's safety helmet, and rider's safety vest shall not be included in a rider's weight.

Section 13. Wagering. A rider shall not place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. (1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened.

(2) Each jockey shall wear:

(a) The cap and jacket racing colors registered in the name of the owner of the horse he is to ride;

(b) Stock tie;

(c) White or light breeches;

(d) Top boots;

(e) A safety vest and safety helmet that meet[~~meets~~] the standards set forth in (4) and (5) below, respectively[~~"Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM F1937-04"~~]; and

(f) A number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.

(3) [~~A safety vest shall not weigh more than two (2) pounds.~~

~~(4)~~] The clerk of scales and attending valet shall be held jointly

responsible with a rider for his neat and clean appearance and proper attire.

(4)[~~(5)~~] A jockey mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker indication that it meets one of the following safety standards:

(a) ASTM International Standard, ASTM F1163-04a;

(b) British Standards, BS EN 1384:1997 or PAS 015:1999; or

(c) Australian/New Zealand Standard, AS/NZS 3838:2006.

(5) A jockey mounted on a horse or stable pony on any location under the jurisdiction of the commission shall wear a safety vest at all times. The safety vest shall not weigh more than two (2) pounds and must comply with one (1) of the following minimum standards:

(a) British Equestrian Trade Association (BETA):2000 Level 1;

(b) Euro Norm (EN) 13158:2000 Level 1;

(c) American Society for Testing and Materials (ASTM) F2681-08;

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or

(e) Australian Racing Board (ARB) Standard 1.1998.

Section 15. Advertising. (1) A jockey shall not wear advertising or promotional material of any kind (whether for a nonprofit or for-profit entity) on clothing within one (1) hour before or after[~~of or during~~] a race, unless:

(a)1.a. The material advertises or promotes the Jockey's Guild in the form of the picture of a jockey's boot or the picture of a wheelchair, with no additional picture or logo;

b. The material advertises or promotes the[~~is the National Thoroughbred Racing Association (NTRA)~~] Permanently Disabled Jockey's Fund in the form of the pictures of its logo, with no additional picture or logo; or

c. The picture or logo has previously been approved by the current owner, association, and the stewards under the process set forth in this administrative regulation, and this approval is reflected in the commission's official records; and

2. The material complies with the size restrictions of subsection (2)(b) of this section; or

(b) The following criteria are met:

1. The material meets the advertising standards listed in subsection (2) of this section; and

2. Written approval by the following is submitted to the commission as provided herein;

(a) The managing owner of the horse, or authorized agent of the managing owner who acts with actual authority and has been specifically authorized in writing to sign the written approval on behalf of the managing owner. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form. If the owner is a business entity, in lieu of filing the "Authorized Agent License Application" form, the owner may file duly adopted resolutions of the business entity authorizing the agent to act on its behalf and remit the $25 license application fee.

(b) The jockey riding the horse or the authorized agent of the jockey who acts with actual authority and has been specifically authorized in writing to sign the written approval on behalf of the jockey. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form;

(c) The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section;

(d) The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections (2)(b) and (3) of this section.

3. Written approval required pursuant to subjection (1)(b) shall be evidenced by completion and return to the commission of the "Request to Wear Advertising and Promotional Materials" form. The form shall be completed and submitted to the stewards not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn. No other form of approval shall be accepted by the commission.[~~The jockey obtains the written approval established in subsection (4) of this section.~~]

(2) Advertising or promotional material displayed on jockey clothing shall:

(a) Not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association race or to the race meet in progress; and

(b) Comply with the following size restrictions;

1. A maximum of thirty-two (32) square inches on each thigh of the pants on the outer side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine;

2. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and

3. A maximum of six (6) square inches on the front center of the neck area (on a turtleneck or other undergarment).

(3) A sponsorship shall not be permitted by a person or entity whose message, business reputation, or ongoing business activity may be considered as obscene or indecent to a reasonable person.

(4)(a) The party presenting the advertising or promotional opportunity to the owner and jockey (including without limitation, the owner and jockey) shall disclose in writing all material terms, including financial, regarding the advertising or promotional opportunity to the owner, jockey, and the commission. The division of proceeds from any advertising or promotional material placed in accordance with this regulation is subject to agreement between the owner and the jockey. The agreement between the owner and jockey shall be made in writing on the "Owner/Jockey Advertising or Promotional Materials Agreement" and submitted to the commission not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn. No other form of agreement or contract shall be used. Any party who fails to comply with this or any other provision provided in this regulation may be subject to penalties by the commission in accordance with 810 KAR 1:025, 810 KAR 1:028, and as otherwise permitted by law.[~~For advertising or promotional material addressed in subsection (1)(b) of this section, approval in writing of all three (3) of the following shall be required:~~

~~1. The managing owner of the horse, or the owner's duly authorized agent;~~

~~2. The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section; and~~

~~3. The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections 2(b) and (3) of this section.~~

~~(b) Written approval shall be evidenced by completion and return of the "Request to Wear Advertising and Promotional Materials." The form shall be completed and submitted to the stewards not later than the time of entry of the subject race.~~]

(5) As a condition for approval of advertising or promotional material, either the owners, the stewards, or the licensed racing association may require a personal viewing of the proposed material as it is to be displayed, to determine that the requirements of this section are met.

(6) This administrative regulation shall not prohibit the sponsor of a licensed racing association race or race meeting from displaying advertising or promotional material on an association saddlecloth if it does not interfere with the clear visibility of the number of the horse.

(7) Advertising content other than that approved in this administrative regulation shall not be permitted.

(8) This administrative regulation shall not infringe upon or limit the common law rights of a racing association to eject or exclude persons, licensed or unlicensed, from association grounds, or to apply the association's internal rules regarding other forms of advertising not addressed in this or any other applicable statute or regulation, provided such internal rules have been previously filed with and approved by the commission or its duly authorized representative[~~or to apply the association's internal rules regarding advertising~~].

Section 16. Viewing Films or Tapes of Races. (1) Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race.

(2) The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves at the time designated by the stewards to view the patrol films or video tapes of races.

(3) Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

Section 17. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM [~~F1937-04~~]"; [~~and~~]

(b) "Request to Wear Advertising and Promotional Material", KHRC 009-01 (5-10)[~~March 2005~~].

(c) "Authorized Agent License Application", KHRC 009-02, 5/10; and

(d) "Owner/Jockey Advertising or Promotional Materials Agreement", KHRC 009-03, 5/10.

(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, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission[~~Authority~~] Web site at http:\\www.khrc.ky.gov/.

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

APPROVED BY AGENCY: June 8, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10 am, 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 July 15, 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 August 2, 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 Bryson 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 Bryson Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth restrictions and requirements regarding the participation of jockeys in horse racing.

(b) The necessity of this administrative regulation: The regulation is necessary to protect the health and safety of jockeys and other human and equine participants in horse racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky. KRS 230.260(14) requires the Kentucky Horse Racing Commission to promulgate regulations establishing safety standards for jockeys, including use of safety vests. This regulation establishes restrictions and requirements concerning the activities of jockeys during thoroughbred race meetings and requires use of certified and tested safety vests.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation gives detailed guidance as to what practices and equipment can and cannot be used by jockeys.

(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 updated provisions concerning the safety vests required to be used by jockeys at locations under the jurisdiction of the commission. The amendment allows the use of several safety vests that provide adequate protection for jockeys.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that jockeys wear proper protective safety vests at locations under the jurisdiction of the commission.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the commission broad authority to promulgate regulations governing horse racing. KRS 230.260(14) requires the Kentucky Horse Racing Commission to promulgate regulations establishing safety standards for jockeys, including use of safety vests. This amendment addresses an important issue concerning jockey safety, the use of safety vests.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further the goal of securing the safety and welfare of jockeys at locations under the jurisdiction of the Commission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 100 jockeys engaged in thoroughbred racing who are licensed by the Kentucky Horse Racing Commission. The jockeys will be required to comply with the new safety vest rules.

(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: Jockeys and companies manufacturing safety vests will be required to conform to the new requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The welfare of jockeys and other human and equine participants in horse racing will be enhanced by ensuring that proper safety vests are worn at locations under the jurisdiction of the commission.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning safety vests apply equally to all participants in horse racing.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation will not impose additional costs upon any government agency.

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

810 KAR 1:026. Racing associations.

RELATES TO: KRS 230.215(2), 230.225(1), 230.260(8), EO 2009-535[~~2008-668~~]

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(1), 230.260(8), EO 2009-535[~~2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.225(1), and 230.260(8) require the commission[~~authority~~] to promulgate administrative regulations establishing conditions governing horse 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.[~~EO 2008-668, effective July 3, 2008, 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 requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track. (1) The grounds and facilities of an association shall be maintained in a manner that provides for the:

(a) Comfort and safety of patrons, employees, and other persons whose business requires their attendance; and

(b) Health and safety of horses that are stabled, or exercise, or entered to race at the association.

(2) The grounds and facilities of an association shall be:

(a) Neat and clean;

(b) Painted; and

(c) In good repair.

(3) An association shall have implements adequate to maintain a uniform track, weather conditions permitting.

Section 2. Results Boards, Totalizators Required. An association shall provide and maintain mechanically operated totalizators and electronic boards that show odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. (1) An association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip.

(2) An association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use.

(3) An association shall provide for periodic inspections of the starting gates.

Section 4. Stabling. (1) An association barn and stall shall be:

(a) Constructed of fire-resistant material;

(b) Clean, sanitary, and equipped for adequate drainage; and

(c) Maintained in good repair.

(2)(a) Prior to the opening of a race meeting, the commission shall submit to the racing secretary a list of locations of approved off-track stabling facilities from which horses shall be permitted to race.

(b) The locations shall be considered association grounds.

Section 5. Stands for Officials. (1) An association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials.

(2) The stands and their locations shall be approved by the commission.

(3) The floor of patrol judge stands shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. An association shall have:

(1) Red and white quarter poles;

(2) Green and white eighth poles; and

(3) Black and white 16th poles.

Section 7. Lighting. (1) An association shall provide and maintain flood lights that provide adequate illumination in the stable area and parking area.

(2) If an association conducts night racing, it shall provide adequate track lighting.

Section 8. Facilities for Stable Employees. (1) An association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities, which shall include showers, toilets, and wash basins for stable employees.

(2) Personnel shall not be permitted to sleep in a stall or barn loft.

Section 9. Facilities for Jockeys. (1) An association shall provide and maintain adequate facilities for jockeys scheduled to ride each day.

(2) The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, and snack bar.

Section 10. Facilities for Commission. (1) An association shall provide adequate office space for the commission on its grounds.

(2) An association shall provide the following to the commission:

(a) A season box, marked "Kentucky Horse Racing Commission", of six (6) to eight (8) seats; and

(b) A number of parking places sufficient for the commission and commission staff.

(3) An association shall honor for access to preferred parking facilities and other areas on its grounds a commission or Association of Racing Commissioners International ring, lapel button, or automobile emblem.

Section 11. Sanitary Facilities for Patrons. An association shall, on every racing day, provide sanitary toilets and wash rooms, and free drinking water adequate for the number of patrons and per-

sons having business at the association that comply with applicable statutes, administrative regulations, codes or ordinances.

Section 12. Manure Removal. (1) An association shall provide and maintain manure pits of the size and construction adequate to handle refuse from stalls.

(2) The contents of the manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo Finish Cameras. (1) An association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races.

(2) One (1) of the photo finish cameras shall be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges the number of prints of finishes requested.

(3) An association shall maintain a one (1) year file of all photo finishes.

Section 14. Patrol Films or Video Tapes. (1) During a race meeting, an association shall provide and maintain personnel and equipment necessary to record and produce motion pictures or video tapes that clearly record each race from start to finish.

(2) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(3)(a) A film and video tape shall be:

1. Retained and secured by an association for at least one (1) year; and

2. Made available to the commission and stewards upon demand.

(b) Upon order of the stewards, a visual record of a race that has raised a question, dispute, or controversy shall be filed with the commission.

(4) Films and video tapes shall be made available:

(a) For viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed; and

(b) To members of the press.

Section 15. Ambulances. (1) An association shall provide and maintain at least one (1) man-ambulance and one (1) horse-ambulance whenever horses are permitted to exercise or race.

(2) An ambulance shall be:

(a) Equipped;

(b) Manned;

(c) Ready for immediate duty; and

(d) Located at an entrance to the racing strip.

Section 16. (1) Except as provided by subsection (2) of this section, an association shall equip and maintain a first aid facility that is:

(a) Equipped with at least two (2) beds; and

(b) Attended by a licensed physician and registered nurse during race hours.

(2) An association shall not be required to maintain a first aid facility, if the association:

(a) Has an ambulance on standby on its premises during race hours; and

(b) Can transport an injured individual to a fully-equipped hospital emergency room in:

1. Five (5) minutes or less; and

2. An ambulance manned by a certified paramedic and certified emergency medical technician.

(3) A paramedic provided pursuant to subsection (2) of this section shall be equipped with:

(a) Heart monitor and defibrillator;

(b) Cellular phone; and

(c) Airways intubation equipment.

Section 17. Track Kitchen. An association shall provide a track kitchen within the stable area, maintained in a clean and sanitary manner that complies with applicable statutes, administrative regulations, codes, or ordinances at all times horses are stabled on association grounds.

Section 18. Communication System. An association shall install and maintain in good working service a communication system between the stewards' stand and:

(1) Patrol judges;

(2) Parimutuel department;

(3) Starting gate;

(4) Public address announcer; and

(5) Clerk of the scales.

Section 19. Fire Prevention. (1) An association shall have a fire prevention and suppression program.

(2) The commission shall not approve the commencement of a race meeting, unless, within fifteen (15) days before commencement of the race meeting, the state or local fire marshal:

(a) Has inspected the association; and

(b) Certified that the association plant and stable area meets fire safety requirements.

(3) An association shall maintain a firefighting unit of trained personnel that has high-expansion foam fire extinguishers, and other equipment required by the local fire inspection authority.

(4) An association shall prohibit:

(a) Smoking in stalls, under shed rows, and in feed rooms;

(b) Open fires and oil or gas lamps in the stable area; and

(c) Locking of stalls occupied by horses.

Section 20. Association Security. (1) An association shall provide and maintain security services, night and day, in and about association grounds.

(2) An association shall furnish to the commission a report on any disturbances, drunkenness, or disorderly conduct committed by a person on association grounds.

Section 21. Security. (1) An association shall exclude from association grounds a person designated to be excluded by order of the commission or stewards.

(2) An association shall implement security measures to protect a horse on association ground from being injured by being frightened or tampered with.

(3) An association shall exclude from the paddock area, race strip, and winner's entrance a person who:

(a) Does not have an immediate connection with the horses entered; and

(b) Is not a commission member, racing official, or accredited member of the news media.

Section 22. Vendors and Suppliers. (1) A vendor shall comply with procedures and requirements established by an association.

(2) An association shall not attempt to control or monopolize sales to owners, trainers, or stable employees.

(3) An association shall not grant a concession to a vendor of feed, racing supplies, or racing services.

(4) A vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including a new preparation or medication.

(5) An association shall not permit the sale of an alcoholic beverage except beer within the stable area.

Section 23. Ejection or Exclusion From Association Grounds. (1)(a) An association shall for probable cause eject or exclude from association grounds a person:

1. Believed to be engaged in:

a. A bookmaking activity;

b. Solicitation of bets; or

c. Touting;

2. Who as a business or for compensation, either directly or indirectly:

a. Accepted anything of value to be wagered, transmitted, or delivered for wager to a pari-mutuel wagering enterprise; or

b. Participated in the transaction; or

3. Who attempted to use tax exempt admissions credentials not issued to him by the association.

(b) An association shall immediately submit a report on the ejection or exclusion from association grounds of a person who engaged in activity prohibited by paragraph (a) of this subsection to

the:

1. Commission;
2. Stewards; and
3. Police.

(2) An association shall eject or exclude from its stable area a person who is not:

(a) Licensed to conduct an activity which requires his presence in the stable area;

(b) An accredited member of the news media;

(c) A guest of a licensed owner or trainer accompanied by the owner or trainer; or

(d) Accompanied by, and under the control and supervision of a:

1. Racing official;
2. Association security guard; or
3. Association public relations department representative.

(3)(a) A report of an ejection or exclusion from association grounds for any reason shall be made immediately to the commission and the stewards.

(b) A report shall state the:

1. Name of person ejected or excluded;
2. Reasons for the ejection or exclusion; and
3. Facts relating to the ejection or exclusion.

Section 24. Ownership of Associations. An association shall file with the commission a revised list of persons whose identity is required by 810 KAR 1:025 immediately upon transfer of a beneficial interest or control in the association.

Section 25. Plan of Association Grounds. (1) An association shall file with the commission maps and plans of association grounds, showing:

(a) Structures;

(b) Piping;

(c) Fire hydrants;

(d) Fixed equipment;

(e) Racing strip, noting elevation as filled, drained, and gapped; and

(f) Composition of track base and cushion.

(2) An association shall file revised maps or plans of association grounds upon any material change.

Section 26. Attendance Report and Badge List Report; Tax Exempt Credentials. (1) An association shall file with the commission a copy of the form required by KRS 137.180 and 138.480, "Race Track Pari-mutuel and Admissions Report," Revenue Form 73A100, incorporated by reference in 103 KAR 3:050.

(2) A tax exempt admission credential shall not be transferable.

Section 27. Financial Report. Within sixty (60) days after the close of its fiscal year, an association shall file:

(1) Three (3) copies of its balance sheet; and

(2) A comparison to the prior year.

Section 28. Horseman's Account and Horseman's Bookkeeper. (1) An association shall maintain a bank account that shall:

(a) Be separate from its other accounts;

(b) Be Entitled "horsemen's account"; and

(c) Contain sufficient funds to pay money owing to horsemen for:

1. Purses;
2. Stakes;
3. Rewards;
4. Claims; and
5. Deposits.

(2) Withdrawals from the horsemen's account shall be subject to audit by the commission at any time.

(3)(a) For all races, purse money shall be available to earners after the result of the race in which the money was earned has been declared official; and

1. For race dates where all samples are reported by the commission laboratory as passed at the screening level, within twenty-four (24) hours after receipt of the report by the commission; or

2. For race dates where one (1) or more sample is reported by the commission laboratory as suspicious at the screening level, within twenty-four (24) hours after receipt of the final report by the commission.

(b) In cases where a horse is disqualified and an appeal has been filed, purse money shall be available to other participants entitled to purse money in the amount they would have earned had a horse not been disqualified. The purse money to which the disqualified participant would be entitled shall be held in escrow by the association until final adjudication of a dispute over which persons are entitled to money.[~~Except as provided by paragraph (b) of this subsection, purse money shall be available to earners within forty-eight (48) hours, dark days excluded, after the result of the race in which the money was earned has been declared official.~~

~~(b) The stewards shall order money withheld until final adjudication of a dispute over which persons are entitled to money.~~]

(4)(a) Except for jockey fees, a deduction from purse money shall not be made, unless the deduction has been requested in writing by the:

1. Person to whom purse money is payable; or
2. Authorized representative of the person to whom purse money is payable.

(b) Whether or not a deduction request is made, at the close of a race meeting, the horsemen's bookkeeper in charge of the horsemen's account shall mail to an owner a duplicate of each record of a deposit, withdrawal, or transfer of funds that affects his racing account.

(5) The horsemen's bookkeeper in charge of the horsemen's account shall be bonded.

Section 29. Outriders. (1) An association shall employ at least two (2) outriders.

(2) An outrider shall:

(a) Escort starters to the post; and

(b) Assist in the returning of all horses to the unsaddling area.

(3) An outrider shall:

(a) Only lead a horse that has demonstrated unruliness; and

(b) Assist in the control of a horse that might cause injury to a jockey or others.

(4) Whenever horses are permitted on the racing strip for exercising or racing, an outrider shall be:

(a) Present on the racing strip;

(b) Mounted; and

(c) Ready to assist in the:

1. Control of an unruly horse; or

2. Recapture of a loose horse.[~~(5) When a person exercises a horse during training hours, or accompanies a horse to the starting gate during racing hours, he shall wear a safety vest that meets the "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM F1937-04," incorporated by reference in 810 KAR 1:009.~~]

Section 30. A person mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the person shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker indicating that it meets one of the following safety standards:

(a) ASTM International Standard, ASTM F1163-04a;

(b) British Standards, BS EN 1384:1997 or PAS 015:1999; or

(c) Australian/New Zealand Standard, AS/NZS 3838:2006.

Section 31. Any person mounted on a horse or stable pony on any location under the jurisdiction of the commission, all assistant starters, and any person handling a horse in a starting gate shall wear a safety vest at all times. The safety vest shall comply with one (1) of the following minimum standards:

(a) British Equestrian Trade Association (BETA):2000 Level 1;

(b) Euro Norm (EN) 13158:2000 Level 1;

(c) American Society for Testing and Materials (ASTM) F2681-08;

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or

(e) Australian Racing Board (ARB) Standard 1.1998.

Section 32. Valets. (1) An association shall employ a number of licensed valets sufficient to attend each rider on a day's racing program.

(2) A valet shall be under the immediate supervision and control of the clerk of scales.

(3) A rider shall not employ a valet or be attended by a person other than the valet assigned to him by the clerk of scales.

(4) A valet shall not be assigned to the same rider for more than two (2) consecutive racing days.

(5) A valet shall:

(a) Be responsible for the care and cleaning up of the apparel and equipment of his assigned rider;

(b) Ensure his rider has the proper equipment and colors for a race;

(c) Present the proper equipment and attend the saddling of his rider's mount; and

(d) Attend the weighing out of his rider.

(6) A valet or other jockey room attendant shall not place a wager, directly or indirectly, on races run while he serves as a valet for himself or another.

(7)(a) An association shall provide uniform attire for valets.

(b) A valet shall wear the attire provided by an association whenever he performs his duty within public view.

Section 33.[~~32.~~] Minimum Purse and Stakes Values. (1) An association shall not program or run any race for which the purse is less than $2,000 in cash, without special permission of the commission.

(2) An association shall not program or run a stakes race the added value of which is less than $10,000 in cash added by the association to stakes fees paid by owners.

(3) The minimum cash amounts paid by the association shall be exclusive of:

(a) Nomination;

(b) Eligibility;

(c) Entrance;

(d) Starting fees;

(e) Cash awards;

(f) Premiums;

(g) Prizes; or

(h) Objects of value.

Section 34.[~~33.~~] Maximum Number of Races. An association shall not program or run more than nine (9) races on a racing day without permission of the commission.

Section 35.[~~34.~~] Two (2) Year Old Races. Beginning on March 1 of each year, an association shall program in the conditions book at least four (4) two (2) year old races each week.

Section 36.[~~35.~~] (1)(a) Exculpatory clauses. Stall applications, entry forms, condition books, and other agreements between persons or entities licensed by the Kentucky Horse Racing Commission regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

1. Ordinary negligence which causes or contributes to loss, injury or damage to horses while on the premises of a licensed association; and

2. Ordinary negligence which causes or contributes to personal injury or property damage, including loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by the licensed association.

(b) Subject to the exception in paragraph (a) of this subsection, all licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. A licensee shall not attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice to and consent of licensees. All persons licensed by the Kentucky Horse Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this administrative regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions which exceed the limitations set forth in this administrative regulation shall be void and unenforceable in their entirety.

(3) Model provision. The following provision shall be deemed to comply with the limitations set forth in this administrative regulation: All Kentucky Horse Racing Commission licensees, including but not limited to the host association, owners, trainers, jockeys, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in these activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training, and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless and covenant not to sue all other licensees so participating for:

(a) Ordinary negligence which causes or contributes to loss, loss of use, injury or damage to horses while on the premises of (name of licensed association); and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee and its agents or employees, the condition of the premises of (name of licensed association) or any other cause. Except as provided above, all licensees participating in racing, training and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law.

Section 37. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM.

(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, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission Web site at www.khrc.ky.gov.

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

APPROVED BY AGENCY: June 8, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10 am, 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 July 15, 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 August 2, 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 Bryson Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Park-

way, 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 sets forth restrictions and requirements on the conduct of a horse race meeting by an association.

(b) The necessity of this administrative regulation: The regulation is necessary to regulate the conduct of racing associations, and to ensure that an association conducts a horse race meeting with adequate regard for the health and safety of participants, horses, and the public.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky. This regulation establishes restrictions and requirements concerning the conduct of horse race meetings by racing associations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation gives detailed guidance as to the requirements racing associations must satisfy to conduct a horse racing meeting, including use of safety equipment.

(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 updated provisions concerning the safety vests required to be used by persons at locations under the jurisdiction of the commission, including racing associations. The amendment allows the use of several safety vests that provide adequate protection. The amendment also requires all persons mounted on a horse as well as persons working the starting gate to wear certified safety vests.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that persons mounted on horses at associations as well as persons working the starting gate wear certified and tested safety vests.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the commission broad authority to promulgate regulations governing horse racing. This amendment creates a safer riding and working environment for human and equine participants in horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further the goal of securing the safety and welfare of persons riding horses and working the starting gate at locations under the jurisdiction of the commission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is difficult to estimate the number of persons involved, but undoubtedly several hundred licensees will be required to comply with the safety vest rule in the Commonwealth, including trainers, exercise riders, out riders, pony riders, and starting gate personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons mounted on horses and working the starting gate at locations under the jurisdiction of the commission will be required to conform to the new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be imposed to comply with this amendment, except for the cost of procuring safety vests. However, this is a normal expense for many participants in horse racing such as jockeys and exercise riders. Some trainers are not in the habit of wearing safety vests, but many states in the U.S. now require trainers to wear safety vests.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will save lives and reduce catastrophic bodily injury. The welfare of human and equine participants in horse racing will be enhanced by ensuring that proper safety vests are worn at locations under the jurisdiction of the Commission.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning safety vests apply equally to all participants in horse racing who are mounted on horses or working the starting gate on grounds under the jurisdiction of the Kentucky Horse Racing Commission.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation will not impose additional costs upon any government agency.

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

811 KAR 2:020. Licensing quarter horse, appaloosa, or arabian racing [~~procedures~~].

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320[~~230.210-230.217~~]

STATUTORY AUTHORITY: KRS 230.215(2), 230.225,

230.240(2), 230.260, 230.290(2), 230.310[~~230.225-230.360~~]

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

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

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

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

(2) Categories of licenses shall include:

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

(b) Racing officials;

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

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

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

(f) Commission members.

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

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

1. a completed written application on the form Licensing Application (KHRA 25-01 (03/10)) or the Multi-jurisdictional License Form pursuant to Section 7 of this administrative regulation; and

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

(b) A temporary license may be obtained by an authorized representative of an owner in accordance with Section 17 of this administrative regulation. 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 quarter horse, appaloosa or arabian racing in the Commonwealth may apply to the commission for a license.

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

(b) An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 17 of this administrative regulation.

(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 KHRC Form 25-04 signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS 321.443.

(c) An application from a veterinary assistant shall be accompanied by a KHRC Form 25-04 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, vendor employee. In order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant shall submit a KHRC Form 25-01 from his or her employer verifying employment and workers' compensation coverage.

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

Section 5. Licensing Fees. The amount of the licensing fees shall depend on the number of race days granted by the commission for quarter horse, appaloosa and arabian racing.

(1) The following annual fees shall apply if the commission awards twenty (20) race days or less for quarter horse, appaloosa,

and arabian racing:

(a) $35 - owner, trainer, assistant trainer, veterinarian, jockey, jockey agent, claiming license, and temporary license;

(b) $35 - racing secretary, assistant racing secretary, director of racing, starter, assistant starter, paddock judge, patrol judge, placing judge, timer, jockey apprentice, farrier, steward, testing laboratory employee, racing department employee, valet, and outrider;

(c) $35 - veterinary assistant, veterinary technician, veterinary technologist, vendor, mutuel employee, farm manager, and farm agent;

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

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

(2) The following annual fees shall apply if the commission awards more than twenty (20) race days for quarter horse, appaloosa and arabian racing:

(a) $125 - owner, trainer, assistant trainer, veterinarian, jockey, jockey agent, claiming license, and temporary license;

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

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

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

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

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

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

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

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

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

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

(3) Verify information provided by the applicant.

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

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

(3) A licensee shall:

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

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

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

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

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

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

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

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

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

Section 12. Voluntary Withdrawal of License Application. (1) A license applicant may, 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 his or her designee, the director of licensing or his or her designee, the chief state steward or his or her desig-

nee, and at least one other commission member or commission staff member as designated by the executive director. At least three (3) members of the committee shall participate in any license review committee meeting.

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

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

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

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

(a) The public interest for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering may be 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 quarter horses, appaloosas or arabians;

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

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

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

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

(s) The licensee or applicant has possessed on association grounds, without written permission from the commission or the chief state steward, any appliance or device, other than an ordinary whip, which could be used to alter the speed of a horse in a race or workout;

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

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

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

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

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

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

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

3. Fighting;

4. Assaults;

5. Offensive and profane language;

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

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

8. Disturbing the peace;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Criminal charges;

(b) Criminal convictions;

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

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

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

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

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

(b) A horse in a trainer's care shall not start in a race unless the owner has a current license or has an application for a temporary license, "Application for a Temporary Owner's License" (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. If a person applies for more than one (1) license, he or she shall pay the license fee associated with each license.

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

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

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

(a) Racing official;

(b) Assistant starter;

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

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

(e) Officer or managing employee;

(f) Track maintenance supervisor or employee;

(g) Outrider;

(h) Race track security employee;

(i) Farrier;

(j) Photo finish operator;

(k) Horsemen's bookkeeper;

(l) Racing chemist;

(m) Testing laboratory employee;

(n) Jockey;

(o) Apprentice jockey; or

(p) Jockey agent.

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

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

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

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

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

(5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the executive director, the stewards, the commission director of 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.

(3) This material is also available at www.khrc.ky.gov.[~~License Required. (1) A person, legal entity, or association shall not conduct any Arabian, quarter horse or appaloosa race for any stakes, purse, or reward in the commonwealth without first securing a license therefor from the commission.~~

~~(2) A person shall not participate in Arabian, quarter horse or appaloosa racing in the commonwealth as a horse owner, trainer, jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, without first securing a license from the commission.~~

~~Section 2. Conditions Precedent to Issuance of License. (1) Arabian, quarter horse and appaloosa racing and participation therein in the commonwealth are privileges, not rights, granted only by the commission by license subject to the conditions precedent established in this section.~~

~~(2) Acceptance of a license shall be construed as consent and agreement to the following conditions precedent by the licensee and failure to comply with these conditions shall be grounds for immediate voidance or revocation of such license:~~

~~(a) Representations made or with license application are complete and correct.~~

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

~~1. Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to:~~

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

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

~~2. Excepted rulings and decisions by the stewards shall be final with no right of review by the commission or courts.~~

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

~~(b) Licensee shall consent to seizure of any object which may be evidence indicating a rule violation. Licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge all questions asked by the commission or its representatives pertaining to racing matters.~~

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

~~(b) Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, or blood specimen taken from a horse, the trainer of the horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering.~~

~~Section 3. Standards for Granting Licenses and Racing Dates to Associations. The commission may issue a license to any association which applies for a licensee to conduct an Arabian, quarter horse or appaloosa race meeting on days as the commission may deem appropriate.~~

~~Section 4. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:~~

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

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

~~(3) Falsification, misrepresentation, or omission of required information in license application to the commission; failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of Arabians, quarter horses or appaloosas.~~

~~(4) Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;~~

~~(5) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in these activities;~~

~~(6) Person less than sixteen (16) years of age;~~

~~(7) Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examinations prescribed by the stewards;~~

~~(8) Intoxication, use of profanity, fighting or any conduct of a disorderly nature, on association grounds;~~

~~(9) Employment or harboring of unlicensed persons required by these rules to be licensed;~~

~~(10) Discontinuance of or ineligibility for activity for which license was issued;~~

~~(11) Possession on association grounds, without written permission therefor from the commission or stewards, of:~~

~~(a) Firearms;~~

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

~~(c) Other applicants other than an ordinary whip which could be used to alter the speed of a horse in a race or workout.~~

~~(12) Possession on association grounds by a person other than a licensed veterinarian of:~~

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

~~(b) Narcotics, or medication, or drug, or substance which could be used to alter the speed of a horse in a race.~~

~~(13) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while persons are in the discharge of their duties;~~

~~(14) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;~~

~~(15) Offering, promising, giving, accepting, or soliciting a bribe~~

in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;

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

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

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

(19) Violation of any administrative regulation of the commission, or aiding or abetting any person in the violation of any administrative regulation.

Section 5. License Applications for Associations. Persons or legal entities desiring to conduct Arabian, quarter horse or appaloosa racing in the commonwealth shall apply to the commission for association license. The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. The application shall contain:

(1) Name and location of track. Initial applications shall be accompanied by such physical information as the commission may require;

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

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

(4) Corporations, partnerships, or other legal entities which own or control a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in such legal entities with a degree of ownership or type of interest pertaining to such ownership or control. Applications shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made;

(5) Days and hours on which racing is requested to be conducted;

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

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

(8) An operating report on forms prescribed by the commission if applicant is currently licensed;

(9) Other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct Arabian, quarter horse and appaloosa racing; and

(10)(a) Based on the daily mutuel handle, all associations and tracks shall pay a daily licensing fee to the Kentucky Quarter Horse, Appaloosa and Arabian Commission as follows:

From	But Less Than	Daily Licensing Fee
$0	$75,000	$100
75,000	150,000	150
150,000	200,000	200
over 200,000		300

(b) In the event that the commission allows two (2) racing programs on one (1) day, a separate daily fee for each racing program shall be paid.

(c) As used in this section the term "daily mutuel" shall mean the total gross amount of money bet or wagered by the track's patrons.

Section 6. License Application for Participants in Racing. (1)(a) A person other than an association required to be licensed by Section 1 and desiring to participate in Arabian, quarter horse and appaloosa racing in the Commonwealth shall apply to the commission for a license.

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

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

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

(4)(a) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one (1) individual person desiring to race horses in the commonwealth shall, in addition to designating the person or persons to represent the entire ownership of such horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in such horses.

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

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

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

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

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

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

(a) Thirty-five (35) dollars - Owner license;

(b) Thirty-five (35) dollars - Trainer, jockey, or forty-five (45) dollars - jockey's agent license;

(c) Thirty-five (35) dollars - Veterinarian, dental technician, assistant trainer, farrier, or apprentice farrier license;

(d) Five (5) dollars - Stable employee license (foreman, authorized agent, exercise boy, groom, hotwalker, watchman, or pony boy);

(e) Twenty-five (25) dollars - Stable area supplier license (suppliers of horse feed, tack, medication, or food vendors);

(f) Thirty-five (35) dollars - Racing department employee license, steward, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, association veterinarian, testing laboratory employee, horse identifier;

(g) Twenty (20) dollars - Mutuel department employee license, manager, calculator sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizator employee;

(h) Ten (10) dollars - Occupational license, admission depart-

~~ment manager and employees; concessions manager and employees; parking manager and employees; association security department including police chief, detectives, policemen, watchmen, fire, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees; valet, jockey room custodian, clerk of the scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider; all other persons employed by the association or employed by a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting.~~

~~Section 7. Licensing Committee. (1) The commission may appoint a licensing committee including the commission secretary and commission steward or their designated representative.~~

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

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

~~Section 8. Term of License. Licenses issued by the commission for participation in Arabian, quarter horse and appaloosa racing shall be valid from the date of issuance through the calendar year shown on the license at all race meetings conducted by associations in the commonwealth during calendar year, unless sooner suspended, revoked, or voided. The validity of a license does not preclude or infringe upon the common law right of associations to eject or exclude any persons, licensed or unlicensed, from association grounds.~~

~~Section 9. Possession of License Required. Persons required to be licensed by these administrative regulations shall not participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license therefor and having same in his possession. All licenses specified under Section 7(9)(b) to (i) of this administrative regulation shall include a color photograph of the licensee.~~

~~Section 10. Applicability of Rules and Rulings to Household. Administrative regulations pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by such affected person will in no way circumvent the intent of the rule, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.~~

~~Section 11. Notice for Discontinuance of Employment. (1) Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities, notify the commission and respective interested persons or associations of their intention at least fifteen (15) days before their termination.~~

~~(2) The commission shall upon notice to parties in interest conduct a hearing on the matter.~~

~~(3) If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these administrative regulations, the commission shall so advise all parties in interest and shall take appropriate action against offending parties.~~

~~(4) If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these administrative regulations, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.~~]

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

APPROVED BY AGENCY: June 8, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10 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 July 15, 2010, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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, 811 KAR 2:020, governs the licensing of individual participants in quarter horse, appaloosa and arabian horse racing in the Commonwealth.

(b) The necessity of this administrative regulation: This regulation is necessary to provide licensing standards for individuals participating in quarter horse, appaloosa and arabian horse 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: Pursuant to KRS 230.215(2) and 230.260(3), the commission is required to promulgate administrative regulations governing the conditions of horse racing in the Commonwealth. In addition, KRS 230.290 and 230.310 provide the statutory criteria for the licensing of participants in horse racing in the Commonwealth. This administrative regulation sets forth the licensing requirements for participants in quarter horse, appaloosa and arabian 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 for participants in quarter horse, appaloosa and arabian racing 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 quarter horse, appaloosa and arabian racing and make them consistent with the requirements for thoroughbred and standardbred racing licenses. 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 811. 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 quarter horse, appaloosa and arabian racing to be consistent with the licensure requirements for thoroughbred and standardbred racing.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation sets forth the rules regard-

ing licensure for individuals participating in quarter horse, appaloosa and arabian racing.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will provide further guidance and clarity regarding he requirements and the process for obtaining a license to participate in quarter horse, appaloosa and arabian racing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 260 licenses for participants in quarter horse, appaloosa and arabian racing 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 positively impacted by the updates to licensing regulations in that the licensing policies and procedures have been clarified, thus making the licensure process clearer and easier to complete.

(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.

(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 commission 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 unless there is a dramatic increase in the number of race days awarded for quarter horse, appaloosa asd arabian racing. Right now there are only three such days awarded. If this area of racing grows and more than 20 such days are awarded, the fees will increase to correspond to the fees in place for standardbred racing licensees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Increase in fees, only as described in (7).

(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. Little or no effect on expenditures or revenues due to the low number of applicants for licenses to participate in quarter horse, appaloosa and arabian racing.

(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? Very little revenue due to the low number of applicants for licenses to participate in quarter horse, appaloosa and arabian racing.

(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? Revenue could increase if there is growth in quarter horse, appaloosa and arabian racing.

(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 Plumbing
(Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130, EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department[~~office~~], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1. Definitions. (1) "ABS" means acrylonitrile-butadiene-styrene pipe.

(2) "APML" means the "Approved Parts or Materials List".

(3) "ASTM" means American Society for Testing Materials.

(4) "Code" is defined by KRS 318.010(11).

(5) "Committee" means the State Plumbing Code Committee.

(6) "Department" means Department[~~Office" means Office~~] of Housing, Buildings, and Construction.

(7) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(8) "Person" is defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department[~~office~~] as being equal to or better than other similarly approved items for inclusion in the APML. The APML may specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the

committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department[~~office~~].

(b) A hearing shall be held before the committee if requested by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department[~~office~~], the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department[~~Office~~] of Housing, Buildings, and Construction, 101 Sea Hero Road, Frankfort, Kentucky 40601-5405.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been reviewed by the Kentucky Plumbing Code Committee and approved by the department[~~Office~~] and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness,..032;

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(g) Dual flush water closets by Caroma, USA. The water closets shall use eight-tenths (.8) gallons for the short flush cycle and one and six-tenths (1.6) gallons for the full flush cycle.

(3) Tubular traps with gasket in trap seal;

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover;

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(e) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(f) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(g) Electric Drain System as manufactured by Myers for light commercial and household usage.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves;

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe;

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand grillage and shall be:

(a) Backfilled by hand and tamped six (6) inches around piping;

(b) Surrounded by six (6) inches of sand grillage;

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc;

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation;

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group;

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters:

(a) Nonpressure type without the requirement of a temperature and pressure relief valve; or

(b) The pressure type with the requirements that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater, which shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130, REU-V2520 FFU-US, REU-V2520 FFUC-US, REU-V2020W-US, REU-V2020WC-US, and REU-V1616W-US pressure type, which shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater, which shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater, which shall be equipped with an approved temperature and

pressure relief valve.

11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

12. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP, which shall be equipped with an approved temperature and pressure relief valve.

14. Ariston electric water heaters, model numbers P-15S and P-10S, which shall be equipped with an approved temperature and pressure relief valve.

15. Vaillant Corporation gas fired point of use water heater.

16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

18. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480.

19. Hot Aqua Instantaneous Tankless Electric Water Heaters, Model Numbers, 18/125PC, 24/125PC, 24/120, 32/120, 24/240, 36/240, 48/240, 59/240, 70/240, 24/208, 35/208, 46/208, 60/208, 28/277, 42/277, 55/277, 69/277, 24/120-P, 59/240-P, 46/208-P, 55/277-P, 18/125PC and 24/125PC. This product shall not be approved for supplying hot water for showers.

20. Stiebel Eltron Tankless Water Heater: Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks.

21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125BS, 125FX and 38B. All models shall be installed with temperature and pressure relief valves.

22. Controlled Energy Corporations "Powerstream" tankless water heater.

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gallon models.

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves.

25. Aquastar AQ240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valve.

26. S.E.T.S. Tankless Water Heater Models: #220, #180, #165 and #145 to be installed with temperature and pressure relief valve.

27. Rinnai Continuous Flow Water Heaters: Models 2532FFU(-C), 2532W(-C), 2532FFU and 2424W(-C) all requiring an approved pressure and temperature relief valve.

28. Noritz American Corporation Tankless, Instantaneous Water Heater Models: N-042, N-063 to be installed with temperature and pressure relief valve.

29. Takagi Industrial Company USA, Inc., Instantaneous Water Heaters, Models: T-KLS; T-K JR; T-K2; T-KD20 to be installed with temperature and pressure relief valve.

30. Envirotech Systems ESI 2000 Series Tankless Water Heaters, all requiring an approved pressure and temperature relief valve.

31. Quietside Instantaneous Water Heater Models: QVW8 - 100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees.

32. Seisco Residential Tankless Water Heaters Model: RA 05, RA 07, RA 09, RA 11, RA 14, RA 18, RA 22 and RA 28. All models shall be equipped with an approved temperature and pressure relief valve.

(11) Compression joints. Fail-safe hot and cold water systems;.

(12) Orion fittings for acid waste piping systems for above and below ground;

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping;

(14) Johns Manville Flex I drain roof drain system;

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick;

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping;

(17) Elkay Aqua-chill water dispensers.;

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum;

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only;

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors;[:]

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(g) Schier Grease Interceptors Trapper II Series meeting ASME 112.14.3 Model numbers 1820, 2025, 2635 and 3050.

(h) Schier Grease Interceptors Great Basin Series meeting ASME 112.14.3 Model numbers GB-75 and GB-250 approved only with the installation of two-directional, accessible cleanouts on the inlet and the outlet. The discharge of garbage disposals are not permitted.

(21) Plastic Oddities Srv (sewer relief vent) clean-out;

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-06 except dimensions at the time of manufacture;

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc;

(24) Eljer plumbing ware - Elgers ultra one/G water closet;

(25)(a) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company, which shall have a three (3) inch vent and alternate additional waste openings shall be located in the pump chamber above the top of the base chamber;

(b) Hydromantic JB-1 System as manufactured by Hydromantic Pumps, Inc.

(26) Exemplar Energy garden solar water heater;

(27) ProSset systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. Proset E-Z flex coupling shall be approved for similar or dissimilar materials;

(28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries;

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-Croix.

(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.

(29) Clamp-All Corporation Pipe Coupling Systems shall be approved size for size on dissimilar materials on new or existing installations. The use of Snap-All Increaser/Reducer transition bushings shall be included in this approval;

(30) Mission Rubber Company "Band-Seal Specialty Coupling" shall be approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35;

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans;

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers;

(33)(a) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade;

(b) Fernco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe shall have been tested for the tensile strength, durability, of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials;

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes;

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes;

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building;

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer;

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line;

(40)(a) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations;

(b) Flo-Bowl Waxless Leakless Toilet System as manufactured by Flo-Bowl Systems Inc.

(41)(a) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion;

(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion.

(42) Plastic Productions PVC "Quick Stub" approved as a solvent weld transition between tubular PVC and schedule 40 PVC;

(43) HubSett In Line Test Coupling: PVC and ABS test couplings produced by HubSett Manufacturing Inc. for testing soil waste and vent systems;

(44) Viega/Ridgid ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint.

(a) The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturer's installation requirements.

(b) This system shall be approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only;

(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes.

(a) A video camera tape of the existing sewer shall be made to determine proper alignment and reviewed by the plumbing inspector.

(b) After the installation is complete, another tape shall be reveiewed by the plumbing inspector to ensure that the installation was successful.

(c) The sewer shall be tested according to 815 KAR 20:150.

(d) The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction;

(46) Envirovac Inc.: Evac Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only;

(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The sump shall be air tight and provided with a minimum one and one-fourth (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer's recommendations and shall not be used as a primary means of waste disposal;

(48) Rhino Wet Waste Interceptor manufactured by Ecosystems Inc. to be used as a prefiltration of wet wastes before discharging to a grease trap or interceptor;

(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products, Inc;

(50) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange;

(51) Service Weight and No-Hub Cast Iron Pipe and Fittings furnished by DWV Casting Company complying with ASTM A74, A888 and CIPI 301-00;

(52) American Pipe Lining, Inc. APL 2000, which is an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the following conditions;

(a) A plumbing construction permit shall be required;

(b) Installation shall be by a licensed plumber;

(c) Water quality shall be tested before and after each project; and

(d) A water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM".

(53) Base Products Corporation;

(a) Water powered pump: basepump. Each model shall:

1. Be installed with a reduced pressure principle backflow preventer with copper piping only;

2. Be approved for groundwater removal only; and

3. Require incoming water pressure of 50 psi to operate.

(b) Battery back-up pump: hydropump.

(54) Perma-Liner Industries, Inc, Lateral Lining System.;

(a) This system shall be approved for pipe sizes three (3) inches through eight (8) inches for interior and exterior installations.

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required by 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videoed before and after and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) A permit shall be obtained prior to an exterior or interior application.

(55) Stainless steel piping system for potable water applications manufactured by Victaulic for above ground applications only;

(56) Wallgate Classic Model CME recessed and molded handwasher/dryer;

(57) MaxLiner;

(a) This system shall be approved for pipe sizes three (3) inch through ten (10) inch for interior and exterior installations.

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) Permits shall be required for both interior and exterior applications.

(58) Nuflow Technologies Inc., Nuflow System;

(a) This system shall be approved for pipe sizes one and one-half (1 1/2) inch through twelve (12) inch for interior and exterior installations.

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) Permits shall be required for both interior and exterior ap-

plications.

(59) Schluter Shower System for waterproofing tiled shower installations installed per manufacturer recommendations;

(60) WATACO Manufacturing Watco Flex and Watco Flex 900 Innovator tub waste and overflow;

(61) J.R. Smith MFG. CO. THE BOSS TEE Series 4505 cleanout tee.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 11, 2010

FILED WITH LRC: June 15, 2010 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 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 July 15, 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 August 2, 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 an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

(b) The necessity of this administrative regulation: This amendment is necessary in order to provide more installation options for parts and materials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 authorizes the department to adopt reasonable rules or regulations, after review by the State Plumbing Code Committee, for 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 provide more installation options for parts and materials.

(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: Provides more installation options for parts and materials.

(b) The necessity of the amendment to this administrative regulation: Will update the plumbing code to provide more installation options for parts and materials.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the regulation to provide additional installation options for parts and materials.

(d) How the amendment will assist in the effective administration of the statutes: Will assist those individuals in the plumbing industry by providing more installation options for parts and materials.

(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 and licensed plumbers.

(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: Those entities will have additional installation options for parts and materials.

(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 will be more installation options of parts and materials.

(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 administrative regulation does not establish any fees directly or indirectly.

(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 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.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:100. Joints and connections.

RELATES TO: KRS 198B.040(7), (10), 198B.050(2), 318.130, 318.150

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department[~~office~~], after review by the State Plumbing Code Committee,- promulgate a State Plumbing Code. This administrative regulation establishes the methods that shall be used in joining certain types of piping materials together and denotes the methods that shall be used in securing plumbing fixtures-waste piping outlets. This administrative regulation also identifies the manufacturer's specification number of the material accepted in those installations.

Section 1. Definitions. (1) "ANSI" means the American National Standards Institute and a copy of the ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, NY 10018.

(2) "ASTM" means the American Society for Testing Materials and a copy of the ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

Section 2. Water and Airtight Joints. Joints and connections shall be made gas and water tight.

Section 3. Vitrified Pipe Joints; Concrete Pipe Joints; House Sewers - Combined Sewers. (1) Joints in vitrified clay pipe shall be ASTM specification C-425.

(2) Joints in concrete pipe shall be ASTM specifications C-443.

(3) If it is necessary to use piping in other than standard lengths, hot poured joints may be used.

(4) Joints between cast iron pipe and vitrified clay pipe or concrete pipe shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. The ring shall completely fill the annular space between the cast iron spigot and the vitrified clay or concrete pipe hub.

(5) Joints in pipe and fittings with no more than two (2) pipe sizes between vitrified clay, acrylonitrile-butadiene-styrene or polyvinyl chloride to cast iron pipe and fittings or the joining of either material may be made with proper fittings by using a dispersion grade polyvinyl chloride ring produced and labeled as either ASTM C-443, C-425, or C-564, or a elastomeric polyvinyl chloride coupling.

Section 4. Caulked Joints. Caulk joints shall be firmly packed with oakum or hemp and shall have at least one (1) inch of pure lead properly caulked. Paint, varnish or putty shall not be permitted until tests have been performed.

Section 5. (1) Screw joints. Screw joints shall be American Standard screw joints and all burrs or cuttings shall be removed as required by 815 KAR 20:150.

(2) Mechanical joint couplings for hot and cold water. Mechanical joint couplings for hot and cold water shall not be used above ground unless the couplings are galvanized and the gaskets produced and labeled as ASTM D2000, grade N-R-615 BZ, or other material listed in approved parts or materials list, 815 KAR 20:020.

(3) Mechanical joint couplings for storm water piping. Mechanical joint couplings for storm water piping shall not be used above ground unless the couplings are either black iron or galvanized and the gaskets produced and labeled as ASTM D2000, grade N-R-615 BZ.

(4) Joints in PVC and ABS Schedule 40 or 80 pipe and fittings.

(a) Joints in polyvinyl chloride schedule 40 or 80 pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D2665.

(b) Joints in acrylonitrile-butadiene-styrene pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D2661.

(c) Acrylonitrile-butadiene-styrene and polyvinyl chloride sewer piping produced and labeled as ASTM 3034 shall be joined by solvent cement produced and labeled as ASTM D-2661-90 for acrylonitrile-butadiene-styrene and ASTM D2665 for polyvinyl chloride or with an elastomeric joint in compliance with ASTM D3212.

(5) Copper pipe, brass, and stainless steel tubing joints.

(a) Joints of copper pipe, brass and stainless steel tubing shall be soldered.

(b) Mechanical couplings.

1. Types K and L copper tubing systems from two (2) inch through six (6) inch and used for water distribution shall be installed using mechanical pipe couplings of a bolted type with a flush seal gasket along with grooved end copper fittings.

2. Couplings shall be of the angle pad design to obtain rigidity.

(6) Expansion. An expansion joint shall be of an approved type and the material shall comply with the type of piping in which it is installed.

(7) Brazed joints. Brazed joints shall be made by cleaning the surfaces to be joined down to the base metal, applying flux approved for the joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.

(8) Elastomeric polyvinyl chloride coupling. Elastomeric polyvinyl chloride couplings shall be used for connecting cast iron, vitrified clay, concrete, or plastic pipe or the combination of these pipe materials for use on house sewers and combination sewers only. This coupling shall be provided with #305 stainless steel clamps.

Section 6. Cast Iron Soil Pipe Joints. (1) Joints in cast iron shall either be caulked, screwed, or made with the use of neoprene gaskets. Neoprene gaskets shall be produced and labeled as ASTM C-564-70.

(2) Cast iron coupling for joining hubless cast iron pipe shall consist of neoprene gasket produced and labeled as ASTM C-564, cast iron clamps produced and labeled as ASTM A-48 and stainless steel bolts and nuts produced and labeled as ANSI B-18.2.1 and ANSI B-18.2.2.

Section 7. Borosilicate Joints. Joints and gaskets used for borosilicate pipe shall be made in a manner approved by the department[~~office~~] as established in 815 KAR 20:060.

Section 8. (1) Steel, brass and copper connections to cast iron pipe. Steel, brass and copper joints connected to cast iron pipe shall be either screwed or caulked joints. Caulked joints shall be made by the use of a caulking spigot.

(2) PVC and ABS pipe and fitting connections to steel, brass, copper and cast iron pipe.

(a) Polyvinyl chloride and acrylonitrile-butadiene-styrene pipe and fitting connections to steel, brass, copper or cast iron pipe shall be either a screwed or caulked joint.

(b) Joints between Schedule 40 PVC or ABS pipe and cast iron pipe may be made by the use of a neoprene gasket produced and labeled as ASTM C-564-70.

(c) Caulk joints shall be made with the use of either a polyvinyl chloride or acrylonitrile-butadiene-styrene or cast iron caulking spigot.

(3) Stainless steel tubing to cast iron pipe or galvanized steel pipe or to copper tubing.

(a) Stainless steel tubing to cast iron pipe shall be made by caulking spigot.

(b) Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(4) Joints in acid waste piping.

(a) Joints in vitreous glazed piping shall be made in compliance with manufacturer's recommendations.

(b) Joints in polyethylene and polypropylene piping shall be made by the heat fusion process.

(c) Joints in polypropylene shall be made with a union joint.

(d) Joints in borosilicate pipe shall be a stainless steel mechanical joint.

(e) Joints between silicon iron pipe shall be either caulk joint or stainless steel mechanical joint.

Section 9. Lead Pipe. (1) Joints in lead pipe or between lead pipe and brass or copper pipes, ferrules, soldering nipples, or trap, shall be full-wiped joints with an exposed surface of the solder at each side of the joint of not less than three-quarters (3/4) of an inch.

(2) The minimum thickness of the thickest part of the joint shall be at least as thick as the material being used.

(3) If lead pipe is used for acid waste lines, the pipe may be joined by burning.

Section 10. Lead Pipe to Cast Iron, Steel, or Wrought Iron Pipe. The joints between lead to cast iron, steel or wrought iron shall be made by means of a caulking ferrule or a soldering nipple.

Section 11. Wall or Floor Flange Joints. Wall or floor flange joints shall be made by using a lead ring or brass flange and shall be properly soldered.

Section 12. Soil Pipe, Iron Pipe, Copper Pipe; Tubular Trap Joints. Joints between soil pipe, iron pipe, copper pipe and tubular traps shall be made by the use of a heavy red cast brass adaptor. Tubular traps shall be soldered to the adaptor in compliance with manufacturer's recommendations.

Section 13. Slip Joints. Slip joints shall be permitted only on the inlet side of a trap except one (1) elastomeric gasket connection may be allowed on the outlet side of the trap provided that:

(1) The connection is not concealed; and

(2) Does not exceed one and one-half (1 1/2) inch.[~~Slip joints shall be permitted only on the inlet side of a trap.~~]

Section 14. Unions. Unions shall be ground faced and shall not be concealed or enclosed.

Section 15. Roof Joints. (1) The joint at the roof shall be made watertight by use of copper, lead or other approved flashing or flashing material.

(2)(a) Except as provided in paragraph (b) of this subsection, the approved flashing shall:

1. Not extend less than six (6) inches from the pipe in all directions; and

2. Extend upward twelve (12) or more inches and turn down into the pipe.

(b) Lead flashings for three (3) inch and four (4) inch vent stacks shall have a minimum twelve (12) inch base.

(3) A hub flashing may be used if it is constructed in a manner allowing the flashing to be caulked into a hub above the roof.

Section 16. Increasers and Reducers. If different size pipes or fittings are to be concealed, the proper size increaser or reducer pitched at an angle of forty-five (45) degrees between the two (2) sizes, shall be used. This section shall not apply to nonmetallic installations.

Section 17. Prohibited Joints and Connections. A fitting or connection which has an enlargement chamber, or recess with a ledge shoulder, or reduction of the pipe area in the direction of the flow shall be prohibited.

Section 18. Hangers and Supports. Piping and fixtures shall be adequately supported by hangers or anchors securely attached to the building construction.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 11, 2010

FILED WITH LRC: June 15, 2010 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 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 July 15, 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 August 2, 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 regulation establishes the methods that shall be used in joining certain types of piping materials together and denotes the methods that shall be used in securing plumbing fixtures to waste piping outlets.

(b) The necessity of this administrative regulation: This amendment is necessary in order to improve the service access to the drain waste and vent system and will allow more connection options.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 authorizes the department to adopt reasonable rules or regulations, after review by the State Plumbing Code Committee, for 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 allow more connection options and better service access to the drain waste and vent system.

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

(a) How the amendment will change this existing administrative regulation: Allows more connection options and better service access to the drain waste and vent system.

(b) The necessity of the amendment to this administrative regulation: Provides more options and better access to the drain waste and vent system.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the regulation to allow more options and better access to the drain waste and vent system.

(d) How the amendment will assist in the effective administration of the statutes: Will assist those individuals in the plumbing industry by allow more connection options and better service access to the drain waste and vent systems.

(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: Plumbing inspectors and plumbers will have better access to the drain waste and vent system and will be able to utilize more connection options.

(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 will be more connection options and better access to the drain waste and vent systems by both plumbers and inspectors.

(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 administrative regulation does not establish any fees directly or indirectly.

(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 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.

GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(Repealer)

201 KAR 9:006. Repeal of 201 KAR 9:005.

RELATES TO: KRS 311.597(4)
STATUTORY AUTHORITY: KRS 311.565(1)(a), (b), (j)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(j) authorizes the board to promulgate a code of conduct governing the practice of medicine and osteopathy based upon generally recognized principles of professional and ethical conduct. This administrative regulation acts specifically to repeal 201 KAR 9:005, Ethical conduct, which is adequately addressed by KRS 311.597(4).

Section 1. 201 KAR 9:005, Ethical conduct, is hereby repealed.

PRESTON P. NUNNELLEY, M.D., PRESIDENT
APPROVED BY AGENCY: May 13, 2010
FILED WITH LRC: May 27, 2010 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2010 at 10 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 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. 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 August 2, 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: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7158.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II, General Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 9:005, Ethical conduct. The necessity of this administrative regulation: It is necessary to repeal 201 KAR 9:005 because it is already addressed by KRS 311.597(4).
(b) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to repeal 201 KAR 9:005, Ethical conduct.
(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to repeal 201 KAR 9:005, Ethical conduct.
(2) If this is an amendment to an existing regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation; This administrative regulation acts specifically to repeal 201 KAR 9:005, Ethical conduct. The necessity of the amendment to this administrative regulation; This administrative regulation acts specifically to repeal 201 KAR 9:005, Ethical conduct.
(b) How the amendment conforms to the content of the authorizing statutes; This administrative regulation acts specifically to repeal 201 KAR 9:005, Ethical conduct.
(c) How the amendment will assist in the effective administration of the statutes. This administrative regulation acts specifically to repeal 201 KAR 9:005, Ethical conduct.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that acts specifically to repeal 201 KAR 9:005, Ethical conduct, which is already addressed by KRS 311.597(4).
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are required to comply with this repealer 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 costs to regulated entities associated with this repealer regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repeal of 201 KAR 9:005, will eliminate the same information already addressed by KRS 311.597(4).
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase of fees or funding will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals 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? None
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), (b), (j)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? None
(d) How much will it cost to administer this program for subsequent years? None
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
(New Administrative Regulation)

300 KAR 2:040. Kentucky film industry incentives application and fees.

RELATES TO: KRS 148.544
STATUTORY AUTHORITY: KRS 148.546
NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.546 requires the Film Office within the Tourism, Arts and Heritage Cabinet to establish standards for the making of an application for incentives and to set forth the fees for application for incentives. This administrative regulation establishes these standards.

Section 1. Definitions. (1) "Application" means the Kentucky Film Office Film Production Company Refundable Tax Credit Application.

(2) "Authority" means the Kentucky Tourism Development Finance Authority.

(3) "Eligible company" is defined by KRS 148.542(10).

(4) "Motion Picture or Entertainment Production" is defined by KRS 148.542(14).

(5) "Office" is defined by KRS 148.542(16).

Section 2. Application. (1) An eligible company wishing to receive incentives for filming a motion picture or entertainment production in the Commonwealth shall file three (3) copies of the application with the office at least thirty (30) days prior to incurring any expenditure.

(2) In addition to the information included in the application as set forth in KRS 148.546, an eligible company shall promptly submit any supporting documentation or information requested by the Office.

Section 3. Recommendation. Prior to making a recommendation on whether to enter into a tax incentive agreement with the eligible company to the Authority, the office shall fully consider:

(1) The eligible company's ability to meet the expenditure requirements of KRS 148.544(3);

(2) The written application submitted by the eligible company; and

(3) All other supplemental information submitted by the eligible company.

Section 4. Agreement. (1) Upon recommendation of the Film Office, the Authority may authorize by resolution the execution of a tax incentive agreement which shall include the provisions required by KRS 148.546(4).

(2) Upon execution of the agreement, the eligible company shall submit the greater of:

(a) $500; or

(b) One-half (0.5) percent of the estimated amount of tax incentive sought.

(3) In the event that the eligible company wishes to increase the amount of qualified expenditures the eligible company:

(a) Shall apply for such increase at least thirty (30) days prior to spending any amounts for which an incentive is sought;

(b) Shall not be eligible for amounts spent in excess of the initial total of approved expenditures prior to the execution of an amended agreement; and

(c) Shall submit an additional fee which shall be the greater of:

1. $500; or

2. One-half (0.5) percent of the estimated amount of increased tax incentive sought.

Section 5. Incorporation by Reference. (1) The "Kentucky Film Office Film Production Company Refundable Tax Credit Application" rev. 07/09, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Tourism Cabinet, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: June 14, 2010
FILED WITH LRC: June 14, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2010 at 9 a.m. at the Kentucky Film Office in the 24th Floor Conference Room, 500 Mero Street, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601. 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 August 2, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Catherine York, 500 Mero Street, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, phone (502) 564-4270, fax (502) 564-1079.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies the process and the fee involved in applying for Film Industry tax incentives.

(b) The necessity of this administrative regulation: This regulation is necessary in order to comply with the requirements of KRS 148.564.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.546 requires the Film Office within the Tourism, Arts and Heritage Cabinet to establish standards for the making of an application for incentives and to set forth the fees for application for incentives.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies the process for making an application for incentives and any amendments to the agreement.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Persons who wish to make a Motion Picture or entertainment production and who wish to apply for incentives will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They must make the initial application and any application for increase in eligible expenditure amounts in a timely fashion. They must submit the fee upon execution of the agreement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The greater of $500 or 0.5% of the estimated amount of tax incentive sought.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Applicants will have their applications fully considered and qualified applicants will receive tax incentives.

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

(a) Initially: No additional cost is anticipated.

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

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

(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 fee has been charged since the passage of the Film Industry Incentives Act. The parameters of fee are established by KRS 148.564. The fees are used to offset the expense of the Authority incurred by meeting to consider the applications. Any amounts left over are used to promote Kentucky as a filming location.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: A fee of the greater of $500 or 0.5% of the estimated amount of tax incentive sought per application is established by this regulation. The parameters of this fee are set forth in KRS 148.564.

(9) TIERING: Is tiering applied? No. This regulation applies equally to all persons wishing to film in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Film Office and the Kentucky Tourism Development Finance Authority 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 148.564

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? While it is anticipated that the program will generate considerable revenue, this administrative regulation in and of itself will not generate any revenue as the fees are offset by the costs of holding meetings of the Kentucky Tourism Development Finance Authority necessary to consider the applications for incentives and to promote filming in Kentucky.

(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? While it is anticipated that the program will generate considerable revenue, this administrative regulation in and of itself will not generate any revenue as the fees are offset by the costs of holding meetings of the Kentucky Tourism Development Finance Authority necessary to consider the applications for incentives and to promote filming in Kentucky.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated.

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:

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

811 KAR 2:140. 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 230.215(2) grants the Kentucky Horse Racing Authority the authority to regulate conditions under which quarter horse, appaloosa, and arabian racing shall be conducted in Kentucky. KRS 230.300 authorizes the authority to issue licenses to conduct race meetings. Executive Order 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 quarter horse, appaloosa or arabian 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", KHRC 140-01 (4/10).

(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. 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. 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. 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. 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 non-refundable.

(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 811 KAR Chapter 2;

(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 811 KAR Chapter 2, and the applicable statutes and regulations;

(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", KHRC 140-02, (4/10). 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) of this section, 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 140-01, 4/10; and

(b) "Kentucky Horse Racing Commission Change of Control Form", KHRC 140-02, 4/10.

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

(3) This material 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: June 8, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2010 at 10 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, KY 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 15, 2010, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 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 establishes the licensing application procedures and requirements for conducting quarter horse, appaloosa and arabian 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 quarter horse, appaloosa and arabian 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 wishing to conduct quarter horse, appaloosa and arabian racing in the Commonwealth are affected by this new regulation. Currently there are eight (8) licensed associations in the Commonwealth of Kentucky and one available license.

(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): First time license applicants will pay costs in the amount of $10,000 to cover the costs of the due diligence performed by the commission in reviewing the application and an additional license fee of $5,000. There are no fees for licensees seeking renewal of an existing license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying, applicants will be able to obtain a license to hold a race meeting, or will be able to

renew an existing license. 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 fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: First time applicants for an association license will pay costs related to the commission performing its due diligence before issuing a license, as well as a licensing fee. They will also be subject to additional questions due to additional information requirements and staff review. Renewal licenses will not be subject to the payment of costs or the licensing fee.

(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/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 Heating, Ventilation and Air Conditioning
(New Administrative Regulation)

815 KAR 8:100. Criteria for local jurisdiction HVAC programs.

RELATES TO: KRS 198B.6673

STATUTORY AUTHORITY: KRS 198B.6673

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.6673 authorizes the Board of Heating, Ventilation and Air Conditioning Contractors to approve HVAC inspection and permitting programs existing prior to January 1, 2007 upon application and to approve other HVAC inspection and permitting programs upon application. This administrative regulation establishes the requirements for local HVAC inspection and permitting programs to request and be approved to operate a program pursuant to Board adopted guidelines.

Section 1. Uniform Criteria for Authorizing HVAC Inspection and Permitting Program existing as of January 1, 2007. To petition the Kentucky Board of Heating, Ventilation and Air Conditioning Contractors, an individual governing entity or combination of entities with an existing heating, ventilation, and air conditioning permitting and inspection program shall comply with the requirements established in this section.

(1) A local governing entity or combination of entities shall complete Form HVAC 31, "Notice of Local HVAC Inspection Program", and submit it to the Department of Housing, Buildings, and Construction, Division of HVAC together with supporting documentation required by this administrative regulation.

(2) Qualified HVAC inspector required. The local HVAC inspection program shall employ a person or persons to perform HVAC installation inspection functions granted to the local government. To be qualified, an inspector shall be licensed or certified in accordance with the provisions of KRS 198B.650 to 198B.689 at the time of employment and:

(a) Have at least six (6) years of experience as a Kentucky licensed heating, ventilation, and air conditioning journeyman mechanic; or

(b) Have at least six (6) years of experience as a Kentucky licensed master heating, ventilation, and air conditioning contractor; or

(c) Be a certified building inspector who has successfully passed the examinations relating to heating, ventilation, and air conditioning systems as approved and recognized by the department.

(3) HVAC Plan Review. A local government's inspection program shall include plan review for commercial installations. Plan reviewers shall minimally have the same experience as those persons qualified under subsection two (2) of this administrative regulation.

(4) Personnel. A complete list of HVAC inspection program personnel, who shall be employed to enforce the HVAC code within the local program's jurisdiction, shall be submitted to the Department of Housing, Buildings, and Construction, Division of HVAC. The list of personnel shall include the name, job title and certification or license status of each individual.

(5) Installation activity. The local HVAC program shall provide documentation of the permits issued and fees collected for the 2006 calendar year, if any, and an estimation of the anticipated activity for the current year.

(6) Schedule of fees. Each local inspection program shall adhere to the schedule of fees approved by the board for the permitting and inspection functions performed under the provisions of KRS 198B.6671, 198B.6673, and all related administrative regulations.

(7) Official contact person. The local government shall identify:

(a) The name and title of the chief building code official;

(b) The name of the department;

(c) The official mailing address;

(d) The phone number;

(e) The fax number; and

(f) The e-mail address, if applicable.

(7) Detailed map required. Where a local government's inspection program consists of a portion of a county, a detailed map shall be submitted to the department for clarification of the areas subject to the program.

Section 2. Uniform Criteria for Authorizing a New HVAC Inspection and Permitting Program. To petition the Kentucky Board of Heating, Ventilation and Air Conditioning Contractors, an individual governing entity or combination of entities applying for ap-

proval of a heating, ventilation and air conditioning inspection program shall comply with the requirements established in this section.

(1) A local governing entity or combination of entities shall complete Form HVAC 31, "Notice of Local HVAC Inspection Program", and submit it to the Department of Housing, Buildings and Construction, Division of HVAC together with supporting documentation required by this administrative regulation.

(2) Qualified HVAC inspector required. The local HVAC inspection program shall employ a person or persons to perform HVAC installation inspection functions granted to the local government. To be qualified, an inspector shall be licensed or certified in accordance with the provisions of KRS 198B.650 to 198B.689 at the time of employment and:

(a) Have at least six (6) years of experience as a Kentucky licensed heating, ventilation and air conditioning journeyman mechanic; or

(b) Have at least six (6) years of experience as a Kentucky licensed master heating, ventilation and air conditioning contractor; or

(c) Be a certified building inspector who has successfully passed the examinations relating to heating, ventilation and air conditioning systems as approved and recognized by the department.

(3) HVAC Plan Review. A local government's inspection program shall include plan review for commercial installations. Plan reviewers shall minimally have the same experience as those persons qualified under subsection two (2) of this section of this administrative regulation.

(4) Personnel. A complete list of HVAC inspection program personnel, who shall be employed to enforce the HVAC code within the local program's jurisdiction, shall be submitted to the Department, Division of HVAC. The list of personnel shall include the name, job title and certification or license status of each individual.

(5) Installation activity. The local HVAC inspection program shall provide documentation an estimation of the anticipated plan review, permitting, inspection and enforcement activities for one year.

(6) Schedule of fees. Each local inspection program shall adhere to the schedule of fees approved by the Board for the permitting and inspection functions performed under the provisions of KRS 198B.6671, 198B.6673 and all related regulations.

(7) Official contact person. The local government shall identify:

(a) The name and title of the chief building code official;

(b) The name of the department;

(c) The official mailing address;

(d) The phone number;

(e) The fax number; and

(f) The e-mail address, if applicable.

(7) Detailed map required. Where a local government's HVAC inspection program consists of a portion of a county, a detailed map shall be submitted to the department for clarification of the areas subject to the program.

Section 3. Contractual Agreement. Upon approval of the Notice of Local HVAC Inspection Program by the board, the department shall prepare the contract to be executed by the department and local government HVAC inspection program. The contract shall specify the jurisdictional authority of each entity to provide clarity for the public and to avoid duplication of services.

Section 4. State Jurisdiction. The department shall retain plan review, permitting, inspection, and enforcement responsibility under the Kentucky Building Code for all buildings which are:

(1) Institutional buildings; and

(2) Educational buildings or other facilities required to be licensed by the Cabinet for Health and Family Services, including day care centers, hospitals, nursing homes, or other similar facilities.

Section 5. HVAC Complaints. (1) A local government's inspection program shall:

(a) Address all complaints occurring within the jurisdiction related to HVAC;

(b) Document findings; and

(c) Document resolutions reached, if any.

(2) All documentation of complaints shall be maintained by the local HVAC inspection program for a period of three (3) years following resolution.

(3) If no resolution is reached, the alleged violator may request a hearing on the matter pursuant to KRS Chapter 13B. Unresolved complaints shall be maintained for five (5) years following receipt of initial complaint.

(4) Status summaries of all complaints shall be submitted to the Division of HVAC by the tenth of each month.

Section 6. HVAC Violations. (1) A local government's HVAC inspection program shall investigate all violations which occur within the jurisdiction; issue stop work orders; or require other remedial measures upon proof of violations.

(2) Local HVAC inspection programs shall initiate and fully cooperate with county and Commonwealth attorneys regarding court cases resulting from a violation.

(3) A local government inspection program representative shall act as a witness for the department on violations resulting in a hearing pursuant to KRS Chapter 13B.

(4) Violations shall be documented in writing.

(5) All documentation of violations shall be maintained by the local HVAC inspection program for a period of three (3) years following resolution of the violation or closure of the violation.

Section 7. Accounting of Fees. (1) A local HVAC inspection program shall maintain an accurate accounting of all HVAC plan review, permitting and inspection fees.

(2) The fees received shall be deposited monthly in the local government's treasury or otherwise disposed of as required by law.

(3) Monthly reports containing the number of commercial permits and number of residential permits issued, cost of each permit, the number of plans reviewed, and the number of inspections made shall be submitted to the Division of HVAC by the tenth of the following month.

Section 8. Record Retention and Audits. (1) A local HVAC inspection program shall maintain official records of:

(a) Applications received;

(b) Permits and certificates issued;

(c) Fees collected;

(d) Inspection reports; and

(e) Notices and orders issued.

(2) Official records shall be retained for the statutory period required for retention of public records pursuant to KRS 171.450.

Section 9. Procedures for Maintaining Local HVAC Inspection Program. (1) The department shall monitor the program of local governments that have been granted a local HVAC inspection and permitting program. If the local government is found to be in violation of the requirements of this administrative regulation, the Kentucky Building Code, any terms of their agreement or KRS Chapter 198B, the Department may cancel the agreement, rescind the local HVAC inspection jurisdiction and preempt the local program in its entirety, upon approval of the board.

(2) Each agreement for local HVAC inspection jurisdiction shall be in effect for three (3) years, unless canceled:

(a) By agreement of the parties in writing; or

(b) Pursuant to subsection (1) of this section.

(3) The local government shall notify the Department, within thirty (30) days of any changes in personnel or fees during the contract period.

(4) The department shall reevaluate the HVAC inspection program of the local government and make a recommendation to the board regarding continuation of the local inspection program and renewal of the agreement before the expiration of the three (3) year contract with the department. Upon approval by the board and the local government, the department shall renew the contractual agreement for three (3) years.

Section 10. Program Deficiencies. (1) Deficiencies documented in a local government's HVAC inspection program shall be

brought before the board for review and decision.

(2) The board shall reconsider a local government's HVAC inspection program approval if evidence of incompetence is found, the program requirements are not being met, terms of the contract with the department are violated, or the statutes and regulations applicable to the HVAC program are not being properly enforced.

(3) A representative of the local HVAC inspection program shall be present during review to address questions and concerns the HVAC board may have.

Section 11. Incorporation by Reference. (1) Form HVAC 31, Notice of Local HVAC Inspection Program, June 2010, is incorporated by reference.

(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, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 15, 2010

FILED WITH LRC: June 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 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 July 15, 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 August 2, 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: The regulation establishes the requirements for local HVAC inspection and permitting programs to request and be approved to operate its program pursuant to Board adopted guidelines.

(b) The necessity of this administrative regulation: KRS 198B.6673 authorizes the Board of Heating, Ventilation and Air Conditioning Contractors to approve HVAC inspection and permitting programs existing prior to January 1, 2007 upon application and to approve other HVAC inspection and permitting programs upon application.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for local HVAC inspection and permitting programs, establishes a notice of local program form and provides uniform requirements for local jurisdictions desiring to start a local HVAC inspection and permitting program and for local programs existing to continue with established programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the requirements for continuing established local HVAC inspection and permitting programs and for approval of a new local HVAC program.

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

(a) How the amendment will change this existing administrative regulation: 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: The Department of Housing, Buildings and Construction, Division of HVAC; HVAC licensees; local governments with established programs and local governments applying to establish a new HVAC inspection and permitting program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A Notice of Local HVAC Inspection Program shall be completed and submitted to the Division of HVAC, Department of Housing, Buildings, and Construction. New programs, once approved, shall be subject to contract with the division.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include consideration and approval of local HVAC permitting and inspection programs.

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

(a) Initially: There are no additional or new costs associated with the implementation of this administrative regulation.

(b) On a continuing basis: There are no additional or new costs associated with implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing HVAC funds will be utilized for the administration of regulating local jurisdiction permitting and inspection programs.

(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 of this administrative regulation will not necessitate an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation. All parties are treated equally under the provisions of 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 HVAC, local jurisdictions with existing HVAC inspection and permitting programs, and local jurisdictions desiring to implement an HVAC inspection and permitting program 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 198B.6673 authorizes the Board of Heating, Ventilation and Air Conditioning Contractors to approve HVAC inspection and permitting programs existing prior to January 1, 2007 upon application and to approve other HVAC inspection and permitting programs upon application.

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 created no new expenditures or fees.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. This regulatory amendment will result in no new revenue or expenditures.

(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 at this time. Revenues for local jurisdictions with approved HVAC inspection and permitting programs will be dependent upon the number of permits issued and inspections conducted.

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: There is no fiscal impact to the Division of HVAC, Department of Housing, Buildings and Construction from this administrative regulation. Local governments that gain approval for an HVAC inspection and permitting program will have positive revenues and positive expenditures to implement and carry out the program.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 8, 2010

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 8, 2010, at 2:15 p.m., in Room 149 of the Capitol Annex. Senator Elizabeth Tori, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the May 2010 meeting were approved.

Present were:

Members: Senators Elizabeth Tori, Alice Forgy-Kerr, and Joey Pendleton and Representatives Leslie Combs, Robert Damron, and Danny Ford.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Chad Collins, Emily Harkenrider, Karen Howard, Jennifer Beeler, and Laura Napier.

Guests: David Lawhorn, Kentucky Higher Education Assistance Authority; Becky Klusch, Donna Sims, Board of Physical Therapy; Jon Gassett, Karen Waldrop, Catherine York, Kentucky Department of Fish and Wildlife Resources; Peter Goodman, Abby Powell, Mary Stephens, EEC: Division of Water; Aaron Keatley, EEC: Division of Compliance Assistance; Tony Hatton, Bruce Scott, EEC: Division of Waste Management; Ann DAngelo, Rick Taylor, Transportation Cabinet; Kevin Brown, Robin Chandler, Kentucky Department of Education; Frank Dickerson, J.R. Wilhite, Kentucky Workers Compensation Funding Commission; Dawn Bellis, George Mann, Richard Moloney, Department of Housing, Buildings and Construction; Donald Bailey, Cornett Donald, Gary Williams, Rusty Chris.

The Administrative Regulation Review Subcommittee met on Tuesday, June 8, 2010, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student Services: Kentucky Educational Savings Plan Trust

11 KAR 12:060. Cancellation, partial withdrawal, and payment of refund. David Lawhorn, program coordinator, represented the division.

GENERAL GOVERNMENT CABINET: Board of Physical Therapy: Board

201 KAR 22:045. Continued competency requirements and procedures. Becky Klusch, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to revise the form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 22:135. Fees.

In response to questions by Representative Damron, Ms. Klusch stated that the board had notified licensees by individual letters and on the board's Web site. The board needed to increase fees because last year's funds had been swept by the General Assembly. Without the fee increase, the board did not expect to have enough funds to continue to operate. The board had not received complaints from licensees regarding the fee increase; however, licensees did have questions regarding the possibility of fees being swept again by the General Assembly.

In response to a question by Co-Chair Tori, Ms. Klusch stated that the board arrived at the need for approximately a $30 increase in each fee by estimating the level of funds needed to cover two (2) years of operations because licenses were renewed every two (2) years.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend the TITLE and Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. With one (1) objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes. Jon Gassett, commissioner; Karen Waldrop, wildlife division director; and Catherine York, deputy general counsel, represented the department.

A motion was made and seconded to approve an amendment to Section 2 to correct a regulatory reference. Without objection, and with agreement of the agency, the amendment was approved.

Game

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to: (a) except Grouse at the Green River WMA; (b) change from the third Sunday to the third Saturday in August as the ending date for the period during which a dog shall not be unleashed at the Miller-Welch Central KY WMA; and (c) prohibit a dog from being unleashed from April 1 until the third Saturday in August at the West KY WMA; and (2) amend Section 5 to correct a regulatory reference and minor formatting errors. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts. . Jon Gassett, commissioner; Karen Waldrop, wildlife division director; and Catherine York, deputy general counsel, represented the department. Gary R. Williams, president, United Bowhunters of Kentucky, appeared in support of this administrative regulation.

In response to a question by Representative Ford, Mr. Gassett stated that sportsmen without access to the Internet could report required information by phone, and agency staff would then enter the data into the computer system.

In response to questions by Senator Pendleton, Mr. Gassett stated that provisions regarding crossbows were removed from this administrative regulation in order to work further with stakeholders.

Mr. Williams stated that the United Bow Hunters of Kentucky was concerned about both conserving resources and helping sportsmen who used bows and was pleased with the department's willingness to work with the organization to fine tune the administrative regulations in the future.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify various definitions and to define "spiked elk"; (2) to amend Section 3 to include the department's Web site address and additional methods of applying for quota hunts for those individuals without access to the internet; (3) to amend Section 4 to allow landowner cooperators one (1) antlerless-only permit in exchange for allowing elk hunting on their property; (4) to amend Section 5 to clarify what items may be used to take an elk and delete provisions prohibiting the carrying of certain items while hunting elk; (5) to amend Section 6 to include spiked elk in antlered hunts in October; (6) to amend Sections 1, 3 through 8, 10, and 11 to comply with the drafting and format requirements of KRS Chapter 13A; (7) to amend the STATUTORY AUTHORITY and RELATES TO paragraphs to add specificity to a statutory citation; and (8) 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.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:045. Biochemically degradable wastes; treatment. Peter Goodmann, assistant director, and Mary Stephens, attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to make a technical clarification; and (2) to revise the Regulatory Impact Analysis and Tiering Statement to correct responses regarding tiering. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 5:070. Provisions of the KPDES permit.

401 KAR 5:075. Cabinet review procedures for KPDES permits.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 11, and 13 to: (1) clarify requirements; and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Public Water Supply

401 KAR 8:150. Disinfection, filtration, and recycling.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Section 1 to: (a) correct a citation; and (b) clarify subsection (1)(b)1. Without objection, and with agreement of the agency, the amendments were approved.

Division of Compliance Assistance: Certified Operators

401 KAR 11:030. Wastewater treatment and collection system operators; classification and qualifications. Aaron Keatley, director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; and (2) to amend Section 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.

Division of Waste Management: Solid Waste Facilities

401 KAR 47:090. Solid waste permit fees. George Gilbert, engineer; Tony Hatton, director; and Bruce Scott, commissioner, represented the division. Rusty Cress, Jr. represented the Kentucky Association of Manufacturers and appeared in support of this administrative regulation.

In response to a question by Representative Ford, Mr. Scott stated that the division had last raised fees in 1990 and that those fees had covered approximately ten (10) percent of the total permit processing cost. KRS 224.10-100 authorized a fee for 100 percent of the total permit processing cost. The proposed amendment increased fees to cover approximately twenty (20) percent of the total permit processing cost. Recent General Fund cuts to the division budget of twenty-nine (29) percent necessitated the fee increase in order to continue timely processing of permit applications.

In response to a question by Senator Pendleton, Mr. Scott stated that there would be a total net increase of approximately $300,000 annually, which would constitute a little more than the cost of living adjustment for the last twenty (20) years. The biggest impact would be on landfills and amounted to approximately eight (8) cents per person. Kentucky's landfill's tonnage rates would still be among the cheapest in the region.

Mr. Cress stated that the Kentucky Association of Manufacturers wanted permits processed in a timely fashion without overages after the fee was computed. While the fee percentage increase was significant, the fee was not onerous from a dollar standpoint. Fees were reduced somewhat in the amended after comments version of this administrative regulation, and stakeholders had not complained about the newly negotiated fee increase.

In response to a question by Representative Damron, Mr. Cress stated that the Kentucky Association of Manufacturers supported the need for the fee increase by the cabinet in order to timely process permits.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to provide cross references to the statutes and administrative regulations that establish or incorporate the application forms; and (2) to amend Section 5 to clarify when the new fees would begin. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Division

601 KAR 1:200. Administration of taxes imposed in KRS 138.655 through 138.7291. Ann D'Angelo, assistant general counsel, and Rick Taylor, deputy commissioner, represented the division.

In response to a question by Representative Ford, Mr. Taylor stated that this administrative regulation did not create additional revenue. The purpose was to clarify the deadline if the deadline fell on a weekend day or holiday. It also allowed cabinet flexibility regarding the filing of forms, especially if forms were sent electronically. Ms. D'Angelo stated that this administrative regulation also updated forms.

In response to a question by Co-Chair Tori, Mr. Taylor stated that this administrative regulation did not increase fuel tax fees, which was done by statute.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add definitions for terms used in the documents incorporated by reference; and (2) to amend Sections 1, 3, 4, 5, 6, 7, 9, 10, 11, and 15 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Office of Instruction

704 KAR 3:540. Uniform academic course codes. Kevin Brown, general counsel, and Robin Chandler, policy advisory, represented the office.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Kentucky Workers' Compensation Funding Commission: Workers' Compensation Funding Commission

803 KAR 30:010. Special fund assessments. Frank Dickerson, general counsel, and J. R. Wilhite, executive director, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 for clarity; (2) to amend Section 2 to reference KRS 342.122; (3) to amend Section 3 to reference KRS 342.1221; and (4) to amend Sections 6 through 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Kentucky Building Code

815 KAR 7:070. The Kentucky Certified Building Inspector Program. Dawn M. Bellis, general counsel; George Mann, deputy commissioner; and Richard Moloney, commissioner, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 6 to delete: (1) “Test M1 Residential Mechanical Inspector” as an ICC test module that will qualify for classification as a Building Inspector, Level II; and (2) “Test B2 Commercial Building Inspector” as an ICC test module that will qualify for classification as a Building Inspector, Level III, and replace it with “Test B3 Building Plans Examiner.” Without objection, and with agreement of the agency, the amendments were approved.

Plumbing

815 KAR 20:018. State plumbing code committee budget review and responsibility.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 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.

The following administrative regulations were deferred to the July 13, 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: 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: School administration and finance

702 KAR 3:246. School council allocation formula: KETS District Administrative System Chart of Accounts.

Department for Libraries and Archives: Public Records Division: Archives

725 KAR 1:061. Records retention schedules; authorized schedules.

Department of Workforce Investment: Office of Vocational Rehabilitation: Administration

781 KAR 1:020. General provisions for operations of the Office of Vocational Rehabilitation.

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Malt Beverage Equipment, Supplies and Service

804 KAR 11:030. Beer tastings.

Kentucky Horse Racing Commission: Division of Licensing: Thoroughbred Racing

810 KAR 1:025 & E. Licensing thoroughbred racing.
810 KAR 1:037 & E. Licensing of racing associations.
810 KAR 1:100 & E. Frivolous appeals.

Harness Racing

811 KAR 1:037 & E. Licensing of racing associations.
811 KAR 1:230 & E. Frivolous appeals.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:130 & E. Frivolous appeals.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:020. Certificate of need application fees schedule.

Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:400. Limited services clinics.

The subcommittee adjourned at 3:05 p.m. until July 13, 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.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of June 16, 2010

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of June 16, 2010, having been referred to the Committee on June 2, 2010, pursuant to KRS 13A.290(6):

201 KAR 20:240
201 KAR 20:490

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 16, 2010 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **A - 2**

The Locator Index lists all administrative regulations published in VOLUME 37 of the Administrative Register from July 2010 through June 2011. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 36 are those administrative regulations that were originally published in VOLUME 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.

KRS Index **A - 5**

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 37 of the Administrative Register.

Technical Amendment Index **A - 7**

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

Subject Index **A - 8**

The Subject Index is a general index of administrative regulations published in VOLUME 37 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	36 Ky.R. Page No.	Effective Date

VOLUME 37

The administrative regulations listed under VOLUME 36 are those administrative regulations that were originally published in Volume 37 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** 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.

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.)

101 KAR 2:066E		
Resubmitted	1860	1-4-10
201 KAR 16:030E		
Resubmitted	2280	5-13-10
401 KAR 8:010E		
Resubmitted	2281	4-20-10
503 KAR 1:140E	1871	1-5-10
Replaced	2178	6-4-10
505 KAR 1:160E		
Resubmitted	1180	11-13-09
703 KAR 5:180E		
Resubmitted	2020-*M*	1-15-10
810 KAR 1:025E		
Resubmitted	2158	3-26-10
810 KAR 1:037E	2165	3-17-10
810 KAR 1:100E		
Resubmitted	2168	3-17-10
811 KAR 1:037E	2169	3-17-10
811 KAR 1:070E		
Resubmitted	2023-*M*	1-15-10
811 KAR 1:230		
Resubmitted	2172	3-17-10
811 KAR 2:130		
Resubmitted	2174	3-17-10
815 KAR 20:050E		
Resubmitted	992	10-01-09
Replaced	2067-*M*	6-4-10
906 KAR 1:180E		
Resubmitted	1184	11-13-09
Replaced	2197	6-4-10
921 KAR 2:530E		
Resubmitted	2294	5-14-10

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 5:145		
Amended	1508	
11 KAR 12:060		
Amended	2055-*A*	
13 KAR 1:020		
Amended	2347	
31 KAR 3:010		
Amended	1095	
As Amended	1434	
31 KAR 6:010		
Amended	2110-*M*	
As Amended	2176	6-4-10
101 KAR 2:066		
Amended	1963	
102 KAR 1:160		
Amended	1966	
As Amended	2177	6-4-10
102 KAR 1:225		
Amended	1967	
Amended	2056-*A*	
As Amended	2299	
Amended	2061-*A*	
As Amended	2302	6-4-10
200 KAR 5:314		
Amended	1300	
As Amended	2177	6-4-10
200 KAR 5:315		
Amended	616	
201 KAR 10:050		
Amended	1301	
As Amended	2047-*M*	
201 KAR 16:030		
Amended	2353	
201 KAR 20:240		
Amended	2071-*A*	6-16-10
201 KAR 20:450		
Amended	527	
201 KAR 20:490		
Amended	2073-*A*	
As Amended	2312	6-16-10
201 KAR 20:510	2402	
201 KAR 22:020		
Amended	2208	
201 KAR 22:045		(See 37 Ky.R.)
Amended	2209	
201 KAR 22:135		(See 37 Ky.R.)
Amended	2211	
201 KAR 30:050		
Amended	152	
Amended	569	
301 KAR 1:140		(See 37 Ky.R.)
Amended	2212	
301 KAR 2:049		(See 37 Ky.R.)
Amended	2215	
301 KAR 2:132		(See 37 Ky.R.)
Amended	2075-*A*	
Amended	2335	
301 KAR 2:172		
Amended	2080-*A*	
As Amended	2314	6-3-10
301 KAR 2:178		
Amended	2082-*A*	
As Amended	2316	6-3-10
401 KAR 5:045		(See 37 Ky.R.)
Amended	2112-*M*	
401 KAR 5:070		
Amended	2114-*M*	
401 KAR 5:075		(See 37 Ky.R.)
Amended	2119-*M*	
Amended	2339	
401 KAR 8:010		
Amended		
401 KAR 8:020		
Amended	2088-*A*	
As Amended	2321	6-3-10
401 KAR 8:070		
Amended	2092-*A*	
401 KAR 8:150		(See 37 Ky.R.)
Amended	2094-*A*	
401 KAR 8:200		
Amended	2097-*A*	

Regulation Number	35 Ky.R. Page No.	Effective Date
As Amended	2323	6-3-10
401 KAR 8:250		
Amended	2099-*A*	
As Amended	2324	
401 KAR 8:300		
Amended	2100-*A*	
As Amended	2324	6-3-10
401 KAR 8:510		
Amended	2101-*A*	
As Amended	2324	6-3-10
401 KAR 8:550		
Amended	2103-*A*	
As Amended	2325	6-3-10
401 KAR 11:010		
Amended	2094	
401 KAR 11:030		(See 37 Ky.R.)
Amended	2105-*A*	
401 KAR 47:090		(See 37 Ky.R.)
Amended	620	
401 KAR 59:015		
Amended	2355	
405 KAR 8:010		
Amended	2360	
503 KAR 1:140		
Amended	1989	
As Amended	2178	6-4-10
503 KAR 3:010		
Amended	2373	
503 KAR 3:040		
Amended	2379	
503 KAR 3:110		
Amended	2383	
601 KAR 1:200		(See 37 Ky.R.)
Amended	2220	
601 KAR 1:220	1571	
Amended	2058-*M*	
As Amended	2184	6-4-10
601 KAR 2:020		
Amended	2388	
601 KAR 12:060		
Amended	1116	
As Amended	2325	6-4-10
603 KAR 4:045		
Amended	2124-*M*	
As Amended	2184	
702 KAR 3:030		
Amended	2108-*A*	
As Amended	2326	
702 KAR 3:246		
Amended	2225	
703 KAR 5:060		
Amended	2109-*A*	
703 KAR 5:180	2144-*M*	
704 KAR 3:540	2260	(See 37 Ky.R.)
725 KAR 1:061		
Amended	2227	
781 KAR 1:020		
Amended	2230	
781 KAR 1:030		
Amended	2232	
781 KAR 1:040		
Amended	2235	
803 KAR 30:010		(See 37 Ky.R.)
Amended	2238	
804 KAR 11:030		
Amended	2112-*A*	
Amended	2344	
810 KAR 1:025		
Amended	2244	
810 KAR 1:037	2261	
810 KAR 1:100	2264	
811 KAR 1:037	2265	
811 KAR 1:070		
Amended	2127-*M*	6-4-10
As Amended	2187	
811 KAR 1:230	2268	
811 KAR 2:130	2269	
815 KAR 7:070		(See 37 Ky.R.)
Amended	2251	
815 KAR 8:070	2004	
As Amended	2194	6-4-10
815 KAR 8:080	2006	
Amended	2048-*A*	
As Amended	2195	6-4-10
815 KAR 8:090	2008	
As Amended	2196	6-4-10
815 KAR 10:060		
Reprint	1857	
815 KAR 20:018	2271	(See 37 Ky.R.)
815 KAR 20:050		
Amended	1134	
As Amended	2067-*M*	6-4-10
815 KAR 20:191		
Amended	2135-*M*	
As Amended	2327	6-23-10
815 KAR 25:080		
Amended	2114-*A*	
As Amended	2333	
900 KAR 5:020		
Amended	2255	
900 KAR 6:020		
Amended	2256	
900 KAR 6:060		
Amended	2258	
900 KAR 6:125	260	
902 KAR 20:400	1572	
Amended	2049-*A*	
906 KAR 1:180	1403	
Amended	2103-*M*	
As Amended	2197	6-4-10
910 KAR 1:240		
Amended	2391	
910 KAR 1:260		
Amended	1997	
As Amended	2201	6-4-10
921 KAR 1:410		
Amended	2395	

VOLUME 37

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.)

31 KAR 4:130E	4	6-15-10
31 KAR 4:140E	6	6-15-10
503 KAR 1:110E	9	6-10-10
810 KAR 1:009E	13	6-15-10
810 KAR 1:026E	18	6-15-10
811 KAR 2:020E	22	6-15-10
811 KAR 2:140E	30	6-15-10

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 3:100		
Amended	71	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date
11 KAR 5:145		
Amended	84	
16 KAR 6:010		
Amended	86	
16 KAR 6:030		
Amended	89	
31 KAR 4:130		
Amended	91	
31 KAR 4:140		
Amended	94	
40 KAR 2:350		
Amended	96	
105 KAR 1:370		
Amended	99	
201 KAR 9:006*(r)*	194	
201 KAR 22:045		(See 36 Ky.R.)
As Amended	34	
201 KAR 22:135		(See 36 Ky.R.)
As Amended	35	
201 KAR 30:040		
Amended	101	
300 KAR 2:040	195	
301 KAR 1:140		(See 36 Ky.R.)
As Amended	35	
301 KAR 1:201		
Amended	102	
301 KAR 1:410		
Amended	107	
301 KAR 2:049		(See 36 Ky.R.)
As Amended	37	
301 KAR 2:132		(See 36 Ky.R.)
As Amended	41	
302 KAR 29:010		
Amended	112	
302 KAR 29:050		
Amended	114	
302 KAR 29:060		
Amended	118	
304 KAR 1:040		
Amended	121	
401 KAR 5:045		(See 36 Ky.R.)
As Amended	44	
401 KAR 5:075		(See 36 Ky.R.)
As Amended	45	
401 KAR 8:100		
Amended	123	
401 KAR 8:150		(See 36 Ky.R.)
As Amended	50	
401 KAR 11:030		(See 36 Ky.R.)
As Amended	51	
401 KAR 47:090		(See 36 Ky.R.)
As Amended	53	
503 KAR 1:110		
Amended	127	
601 KAR 1:200		(See 36 Ky.R.)
As Amended	56	
601 KAR 1:201		
Amended	131	
702 KAR 5:110		
Amended	135	
704 KAR 3:540		(See 36 Ky.R.)
As Amended	60	
704 KAR 3:303		
Amended	137	
704 KAR 3:305		
Amended	138	
787 KAR 2:020		
Amended	141	
803 KAR 2:300		
Amended	144	
803 KAR 2:306		
Amended	146	
803 KAR 2:308		
Amended	149	
803 KAR 2:316		
Amended	151	
803 KAR 2:320		
Amended	153	
803 KAR 2:425		
Amended	159	
803 KAR 2:500		
Amended	161	
803 KAR 30:010		(See 36 Ky.R.)
As Amended	61	
805 KAR 7:020		
Amended	164	
805 KAR 8:060		
Amended	165	
810 KAR 1:009		
Amended	169	
810 KAR 1:026		
Amended	174	
811 KAR 2:020		
Amended	178	
811 KAR 2:140	196	
815 KAR 7:070		(See 36 Ky.R.)
As Amended	65	
815 KAR 8:100	199	
815 KAR 20:018		(See 36 Ky.R.)
As Amended	68	
815 KAR 20:020		
Amended	186	
815 KAR 20:100		
Amended	191	

SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

KRS INDEX

KRS SECTION	REGULATION
11A	105 KAR 1:370
18A.095	105 KAR 1:370
217B	302 KAR 29:010
	302 KAR 29:060
217B.190	302 KAR 29:050
217B.515	302 KAR 29:050
217B.520	302 KAR 29:050
217B.525	302 KAR 29:050
217B.545	302 KAR 29:050
218A	105 KAR 1:370
15.330	503 KAR 1:110
15.386	503 KAR 1:110
15.404	503 KAR 1:110
15.440	503 KAR 1:110
61.394	105 KAR 1:370
61.645	105 KAR 1:370
116.045	31 KAR 4:130
	31 KAR 4:140
116.0452	31 KAR 4:130
116.995	31 KAR 4:140
117.079	31 KAR 4:130
	31 KAR 4:140
117.085	31 KAR 4:130
	31 KAR 4:140
117.086	31 KAR 4:130
	31 KAR 4:140
117.995	31 KAR 4:140
119.265	31 KAR 4:140
131.110	601 KAR 1:201
138.227	601 KAR 1:201
138.655-138.7291	601 KAR 1:201
148.021	304 KAR 1:040
148.051	304 KAR 1:040
148.056	304 KAR 1:040
148.544	300 KAR 2:040
148.991	304 KAR 1:040
150.010	301 KAR 1:201
	301 KAR 1:410
150.025	301 KAR 1:410
150.120	301 KAR 1:410
150.170	301 KAR 1:201
	301 KAR 1:410
150.175	301 KAR 1:201
	301 KAR 1:410
150.235	301 KAR 1:410
150.340	301 KAR 1:201
150.360	301 KAR 1:410
150.370	301 KAR 1:410
150.440	301 KAR 1:410
150.445	301 KAR 1:410
150.620	301 KAR 1:410
150.990	301 KAR 1:201
	301 KAR 1:410
151B.280	787 KAR 2:020
151.634	401 KAR 8:100
156.070	704 KAR 3:303
156.160	704 KAR 3:303
	704 KAR 3:305
157.370	702 KAR 5:110
158.645	704 KAR 3:305
158.6451	704 KAR 3:303
	704 KAR 3:305
160.290	704 KAR 3:303
161.020	16 KAR 6:010
	16 KAR 6:030
161.027	16 KAR 6:030
161.028	16 KAR 6:010
161.030	16 KAR 6:010
	16 KAR 6:030
164.357	105 KAR 1:370
164.744	11 KAR 3:100
	11 KAR 5:145
164.748	11 KAR 3:100
164.753	11 KAR 3:100
	11 KAR 5:145
164.7535	11 KAR 5:145
164.7889	11 KAR 5:145
186.650	601 KAR 1:201
198B.040	815 KAR 20:100
198B.050	815 KAR 20:100
198B.6673	815 KAR 8:100
224.10-110	401 KAR 8:100
224.60-100	401 KAR 8:100
230.215	810 KAR 1:009
	810 KAR 1:026
230.225	810 KAR 1:026
230.260	810 KAR 1:026
	811 KAR 2:020
	811 KAR 2:140
230.280	811 KAR 2:140
230.290	811 KAR 2:020
	811 KAR 2:140
230.300	811 KAR 2:140
230.310	811 KAR 2:020
230.320	811 KAR 2:020
	811 KAR 2:140
311.597	201 KAR 9:006
318.010	815 KAR 2:020
318.015	815 KAR 2:020
318.130	815 KAR 2:020
	815 KAR 20:100
318.150	815 KAR 2:020
	815 KAR 20:100
318.200	815 KAR 2:020
324A.035	40 KAR 2:350
324A.050	40 KAR 2:350
335B.010	105 KAR 1:370
335B.020	105 KAR 1:370
338	803 KAR 2:306
338.015	803 KAR 2:320
	803 KAR 2:500
338.031	803 KAR 2:320
338.051	803 KAR 2:316
338.061	803 KAR 2:316
339.015	803 KAR 2:300
	803 KAR 2:316
341.190	787 KAR 2:020
342	105 KAR 1:370
344.030	105 KAR 1:370
344.040	105 KAR 1:370
351.010	805 KAR 8:060
351.025	805 KAR 8:060
351.1041	805 KAR 8:060
351.102	805 KAR 7:020
351.105	805 KAR 7:020
351.175	805 KAR 8:060
351.194	805 KAR 8:060
351.010-352.550	805 KAR 8:060
369.107	31 KAR 4:140
380.010	40 KAR 2:350
380.030	40 KAR 2:350
380.040	40 KAR 2:350
380.050	40 KAR 2:350
380.990	40 KAR 2:350
12 C.F.R.	40 KAR 2:350
29 C.F.R.	105 KAR 1:370
	803 KAR 2:300
	803 KAR 2:306
	803 KAR 2:308
	803 KAR 2:316
	803 KAR 2:320
	803 KAR 2:425
	803 KAR 2:500
34 C.F.R.	11 KAR 3:100

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
40 C.F.R.	401 KAR 8:100		
49 C.F.R.	601 KAR 1:201		
12 U.S.C.	40 KAR 2:350		
20 U.S.C.	11 KAR 3:100		
	105 KAR 1:370		
21 U.S.C.	105 KAR 1:370		
42 U.S.C.	11 KAR 3:100		
	31 KAR 4:140		
49 U.S.C.	601 KAR 1:201		
2010 Ky. Acts Ch. 86	40 KAR 2:350		
EO 2009-535	810 KAR 1:009		
	810 KAR 1:026		
	811 KAR 2:140		

TECHNICAL AMENDMENT INDEX

Regulation Number	Effective Date	Regulation Number	Effective Date

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

NONE

SUBJECT INDEX

AGRICULTURE, DEPARTMENT OF
Office of Consumer and Environmental Protection
Certification; 302 KAR 29:060
Commercial structural pest control and fumigation; 302 KAR 29:050
Definitions for 302 KAR Chapter 29; 302 KAR 29:010

ATTORNEY GENERAL, OFFICE OF
Consumer Protection Division
Debt adjusters; 40 KAR 2:350

EDUCATION, BOARD OF
Education, Department of
Pupil Transportation
Vocational pupils, reimbursement for; 702 KAR 5:110
Office of Instruction
Required core academic standards; 704 KAR 3:303
Minimum requirements for high school graduation; 704 KAR 3:305

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education, Board of *(See Education, Board of)*
Workforce Investment; Department of *(See Workforce Investment; Department of)*

EDUCATION PROFESSIONAL STANDARDS BOARD
Assessment
Examination prerequisites for principal certification; 16 KAR 6:030
Written examination prerequisites for teacher certification; 16 KAR 6:010

ENERGY AND ENVIRONMENT CABINET
Mine Safety and Licensing, Office of *(Mine Safety and Licensing; Office of)*
Natural Resources, Department for *(Natural Resources, Department for)*

FINANCE AND ADMINSITRATION CABINET
Kentucky Retirement Systems
Kentucky retirement systems and personnel; 105 KAR 1:370

FISH AND WILDLIFE RESOURCES, DEPARTMENT OF
Fish
Recreational fishing limits; 301 KAR 1:201
Taking of fish by nontraditional fishing methods; 301 KAR 1:410

GENERAL GOVERNMENT CABINET
Agriculture, Department of *(See Agriculture, Department of)*
Medical Licensure; Board of *(Medical Licensure; Board of)*
Repeal of 201 KAR 9:005; 201 KAR 9:006
Real Estate Appraisers Board
Standards of practice; 201 KAR 30:040

HEATING, VENTILATION AND AIR CONDITIONING, DIVISION OF *(See Housing, Buildings and Construction, Department of)*

HOUSING, BUILDINGS AND CONSTRUCTION
Heating, Ventilation and air conditioning, Division of
Heating, Ventilation, and Air Conditioning Licensing Requirements
Criteria for local jurisdiction HVAC programs; 815 KAR 8:100
Plumbing, Division of *(See Plumbing, Division of)*

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
Department of Criminal Justice Training basic training: graduation requirements; records; 503 KAR 1:110

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Student and Administrative Services; Division of
KHEAA Grant Programs
CAP grant award determination procedure; 11 KAR 5:145
Kentucky Loan Program
Administrative wage garnishment; 11 KAR 3:100

KENTUCKY HORSE RACING COMMISSION
Licensing, Division of
Quarter Horse, Appaloosa and Arabian Racing
Licensing of racing associations; 811 KAR 2:140
Licensing quarter horse, appaloosa or Arabian racing; 811 KAR 2:020
Thoroughbred Racing
Jockeys and apprentices; 810 KAR 1:009
Racing associations; 810 KAR 1:026

KENTUCKY STATE BOARD OF ELECTIONS
Forms and Procedures
Electronic submission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens; 31 KAR 4:140
Facsimile transmission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens; 31 KAR 4:130

LABOR CABINET
Workplace standards; Department of *(See Workplace standards; Department)*

MEDICAL LICENSURE, BOARD OF
Repeal of 201 KAR 9:005; 201 KAR 9:006

MINE SAFETY AND LICENSING, OFFICE OF
Miner Training, Education and Certification
Training and certification of inexperienced miners; 805 KAR 7:020
Sanctions and Penalties
Criteria for the imposition and enforcement of sanctions against licensed premises; 805 KAR 8:060

NATURAL RESOURCES, DEPARTMENT FOR
Mine Safety and Licensing, Office of *(Mine Safety and Licensing; Office of)*

PARKS; DEPARTMENT OF
Parks and Campgrounds
Campgrounds; 304 KAR 1:040

PLUMBING, DIVISION OF
Plumbing
Joint and connections; 815 KAR 20:100
Parts or materials list; 815 KAR 20:020

PUBLIC PROTECTION CABINET
Housing, Buildings and Construction, Department *(See Housing, Buildings and Construction)*
Kentucky Horse Racing Commission (See Kentucky Horse Racing Commission)

TOURISM, ARTS AND HERITAGE CABINET
Office of the Secretary
Kentucky Film Industry Incentives Application and fees; 300 KAR 2:040
Parks; Department of *(See Parks; Department of)*
Fish and Wildlife Recourses, Kentucky Department of *(See Fish and Wildlife Resources, Kentucky Department of)*

TRANSPORTION CABINET
Office of Audits
Road Fund Audits; Division of
Recordkeeping and audit requirements of taxes imposed in KRS 138.655 through 138.7291

WORKFORCE INVESTMENT, DEPARTMENT OF
Office of Employment and Training
Confidentially of records of the Office of Employment and Training; 787 KAR 2:020

WORKFORCE STANDARDS, DEPARTMENT OF

Occupational Safety and Health Compliance, Division of

- General; 803 KAR 2:300
- Maritime employment; 803 KAR 2:500
- Occupational health and environmental controls; 803 KAR 2:306
- Personal protective equipment; 803 KAR 2:308
- Toxic and hazardous substances; 803 KAR 2:320
- Toxic and hazardous substances; 803 KAR 2:425
- Welding, cutting, and brazing; 803 KAR 2:316